



Amendment No. 2
to
Agreement No. 4700 NG190000012
for
Social Services
between
FRONT STEPS, INC.
and the
CITY OF AUSTIN

***Emergency Solutions Grant- Shelter Operations
CFDA # 14.231***

- 1.0 The City of Austin and the Grantee hereby agree to the Agreement revisions listed below.
- 2.0 The total amount for this Amendment to the Agreement is ***Three Hundred Thirteen Thousand Nine Hundred Twenty Two dollars (\$313,922)***. The total Agreement amount is recapped below:

Term	Agreement Change Amount	Total Agreement Amount
Basic Term: (Oct. 1, 2018 – Sept. 30, 2019)	n/a	313,922
Amendment No. 1: Exercise Extension Option #1 (Oct. 1, 2019 – Sept. 30, 2020)	\$ 313,922	\$ 627,844
Amendment No. 2: Exercise Extension Option #2 (Oct. 1, 2020 – Sept. 30, 2021)	\$ 313,922	\$ 941,766

- 3.0 The following changes have been made to the original Agreement EXHIBITS:

Exhibit A.1 -- Program Work Statement is deleted in its entirety and replaced with a new **Exhibit A.1 -- Program Work Statement**. [Revised 10/16/2020]

Exhibit B.1 -- Program Budget and Narrative is deleted in its entirety and replaced with a new **Exhibit B.1 -- Program Budget and Narrative**. [Revised 10/16/2020]

Exhibit B.3 -- Compensation Terms is added to the agreement.

Exhibit C -- Equal Employment/Fair Housing Office/Non-Discrimination Certification is deleted in its entirety and replaced with a new **Exhibit C -- Equal Employment/Fair Housing Office/Non-Discrimination Certification, Israel Verification, and Conflicts of Interest** [Revised 4/13/2020]

Exhibit D -- Required ESG Program Forms are deleted in their entirety and replaced with new **Exhibit D -- Required ESG Program Forms** [Revised 10/16/2020]

- D.1 ESG Program Standards, Policies, and Procedures
- D.2 ESG Regulations (24 CFR Part 576)
- D.3 ESG Homeless Eligibility Form
- D.4 ESG Habitability Standards

Exhibit F -- Federal Award Identification is deleted in its entirety and replaced with a new **Exhibit F -- Federal Award Identification**. [Revised 10/16/2020]

- 4.0 The Terms and Conditions for this Agreement are deleted in their entirety and replaced with the following:

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Grantee.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Grantee is engaged to provide the services set forth in the attached Agreement Exhibits.

1.1.1 This Agreement entered into between the City and the Grantee is designated a Social Services REIMBURSABLE Agreement.

1.2 **Responsibilities of the Grantee.** The Grantee shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Agreement Exhibits. The Grantee shall assure that all Agreement provisions are met by any Subgrantee performing services for the Grantee.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Grantee's activities in completing the Program Work Statement. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Agreement, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Grantee, and shall approve all requests for payment, as appropriate. The City's Contract Manager shall give the Grantee timely feedback on the acceptability of progress and task reports. The Contract Manager's oversight of the Grantee's activities shall be for the City's benefit and shall not imply or create any partnership or joint venture as between the City and the Grantee.

1.4 **Designation of Key Personnel.** The City's Contract Manager for this Agreement, to the extent stated in the preceding Section 1.3, shall be responsible for oversight and monitoring of Grantee's performance under this Agreement as needed to represent the City's interest in the Grantee's performance.

1.4.1 The City's Contract Manager or designee:

- may meet with Grantee to discuss any operational issues or the status of the services or work to be performed; and

- shall promptly review all written reports submitted by Grantee, determine whether the reports comply with the terms of this Agreement, and give Grantee timely feedback on the adequacy of progress and task reports or necessary additional information.

1.4.2 Grantee's Contract Manager or designee, shall represent the Grantee with regard to performance of this Agreement and shall be the designated point of contact for the City's Contract Manager.

1.4.3 If either party replaces its Contract Manager, that party shall promptly send written notice of the change to the other party. The notice shall identify a qualified and competent replacement and provide contact information.

SECTION 2. TERM

2.1 **Term of Agreement.** The Agreement shall be extended for a term of 12 months beginning October 1, 2020 through September 30, 2021.

2.1.1 Upon expiration of the initial term or period of extension, the Grantee agrees to hold over under the terms and conditions of this Agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed upon in writing).

SECTION 3. PROGRAM WORK STATEMENT

3.1 **Grantee's Obligations.** The Grantee shall fully and timely provide all services described in the attached Agreement Exhibits in strict accordance with the terms, covenants, and conditions of the Agreement and all applicable federal, state, and local laws, rules, and regulations.

SECTION 4. COMPENSATION AND REPORTING

4.1 **Agreement Amount.** The Grantee acknowledges and agrees that, notwithstanding any other provision of this Agreement, the maximum amount payable by the City under this Agreement for the 12-month term shall not exceed the amount approved by City Council, which is **\$313,922 (Three Hundred Thirteen Thousand Nine Hundred Twenty Two dollars)**. Continuation of the Agreement beyond the 12 months is specifically contingent upon the availability and allocation of funding, and authorization by City Council. Additional compensation terms are included in Exhibit B.3.

4.2 **Reports.**

4.2.1 Grantee must submit a fully and accurately completed payment request to the City's Contract Manager using the City's contract management system by the deadline outlined in Exhibit B.3. Grantee must provide complete and accurate supporting documentation. Upon receipt and approval by the City of each complete and accurate payment request, the City shall process the payment to the Grantee in an amount equal to the City's payment obligations, subject to deduction for any unallowable costs.

4.2.2 Grantee shall submit a quarterly program performance report using the format and method specified by the City no later than 11:59 p.m. Central Standard Time (CST) 15 calendar days following each calendar quarter. If the 15th calendar day falls on a weekend or holiday, as outlined in Section 8.24, the deadline to submit the quarterly program performance report is extended to no later than 11:59 p.m. CST of the 1st weekday immediately following the weekend or holiday. Grantee shall provide complete and accurate supporting documentation upon request by City. Payment Requests will not be approved if any accurate and complete performance report, including any required documentation, is past due. Performance reports on a frequency other than quarterly may be required by the City based upon business needs.

4.2.3 An annual Contract Progress Report, using the forms in the City's contract management system, shall be completed by the Grantee and submitted to the City within 45 calendar days following the end of each Program Period.

4.2.4 A Contract Closeout Summary Report using the forms in the City's contract management system shall be completed by the Grantee and submitted to the City within 60 calendar days following the expiration or termination of this Agreement. Any encumbrances of funds incurred

prior to the date of termination of this Agreement shall be subject to verification by the City. Upon termination of this Agreement, any unused funds, unobligated funds, rebates, credits, or interest earned on funds received under this Agreement shall be returned to the City.

4.2.5 Grantee shall provide the City with a copy of the completed Agency Administration Profile (AAP) using the forms in the City's contract management system, and required AAP Attachments, including a copy of the Grantee's completed Internal Revenue Service Form 990 or 990EZ (Return of Organization Exempt from Income Tax) if applicable, for each calendar year to be due in conjunction with submission of the Grantee's annual financial audit report or financial review report as outlined in Section 4.5.4. If Grantee filed a Form 990 or Form 990EZ extension request, Grantee shall provide the City with a copy of that application of extension of time to file (IRS Form 2758) within 30 days of filing said form(s), and a copy of the final IRS Form 990 document(s) immediately upon completion.

4.2.5.1 Governmental Entities are not required to submit an Agency Administration Profile to the City under this Agreement.

4.2.6 Grantee shall provide other reports required by the City to document the effective and appropriate delivery of services as outlined under this Agreement as required by the City.

4.3 **Grantee Policies and Procedures.**

4.3.1 Grantee shall maintain written policies and procedures aligned with best practices and approved by its governing body and shall make copies of all policies and procedures available to the City upon request. At a minimum, written policies shall exist in the following areas: Financial Management; Subcontracting and/or Procurement; Equal Employment Opportunity; Personnel and Personnel Grievance; Nepotism; Non-Discrimination of Clients; Client Grievance; Drug Free Workplace; the Americans with Disabilities Act; Conflict of Interest; Whistleblower; and Criminal Background Checks.

4.3.2 Grantee shall provide the City with copies of revised Articles of Incorporation and Doing Business As (DBA) certificates (if applicable) within 14 calendar days of receipt of the notice of filing by the Secretary of State's office. Grantee shall provide the City with copies of revised By-Laws within 14 calendar days of their approval by the Grantee's governing body.

4.4 **Monitoring and Evaluation.**

4.4.1 Grantee agrees that the City or its designee may carry out monitoring and evaluation activities to ensure adherence by the Grantee and Subgrantees to the Program Work Statement, Program Performance Measures, and Program Budget, as well as other provisions of this Agreement. Grantee shall fully cooperate in any monitoring or review by the City and further agrees to designate a staff member to coordinate monitoring and evaluation activities.

4.4.2 The City expressly reserves the right to monitor client-level data related to services provided under this Agreement. If the Grantee asserts that client-level data is legally protected from disclosure to the City, a specific and valid legal reference to this assertion must be provided and is subject to acceptance by the City's Law Department.

4.4.3 Grantee shall provide the City with copies of all evaluation or monitoring reports received from other funding sources during the Agreement Term upon request following the receipt of the final report.

4.4.4 Grantee shall keep on file copies of all notices of Board of Directors meetings, Subcommittee or Advisory Board meetings, and copies of approved minutes of those meetings.

4.5 Financial Audit of Grantee.

4.5.1 Grantee shall annually contract with an independent auditor utilizing a Letter of Engagement to complete either a full financial audit or financial review. The auditor must be a Certified Public Accountant recognized by the regulatory authority of the State of Texas.

4.5.1.1 Governmental Entities are not required to submit a financial audit to the City under this Agreement.

4.5.2 In the event Grantee expends \$750,000 or more in a year in federal awards, Grantee shall have a single or program specific audit conducted in accordance with Chapter 200, Subpart F, of Title 2 of the Code of Federal Regulations as required by the Single Audit Act of 1984, as amended (Single Audit Act), and shall submit to the City a complete set of audited financial statements and the auditor's opinion and management letters in accordance with Chapter 200, Subpart F, of Title 2 of the Code of Federal Regulations and any guidance issued by the federal Office of Management and Budget covering Grantee's fiscal year until the end of the term of this Agreement.

4.5.3 If Grantee is not subject to the Single Audit Act, and expends \$750,000 or more during the Grantee's fiscal year, then Grantee shall have a full financial audit performed in accordance with Generally Accepted Auditing Standards (GAAS). If less than \$750,000 is expended, then a financial review is acceptable, pursuant to the requirements of this Agreement.

4.5.4 Grantee shall submit a complete financial audit report or financial review which has been presented and accepted by the Board of Directors, to include the original auditor Opinion Letter/Independent Auditor's Report within 270 calendar days of the end of Grantee's fiscal year, unless alternative arrangements are approved in writing by the City. The financial audit report or financial review report must include the Management Letter/Internal Controls Letter, if one was issued by the auditor.

4.5.5 Grantee shall submit an APH Board Certification Form that was signed and dated by the Grantee's Board Chair. The APH Board Certification Form confirms that the independent auditor presented the financial audit or financial review to the Grantee's Board or committee of the Board and that it was accepted by the Grantee's Board of Directors or a committee of the Board. The City will deem the financial audit report/financial review report incomplete if the Grantee fails to submit the Board Certification form, as required by this Section.

4.5.6 The inclusion of any Findings or a Going Concern Uncertainty, as defined by Chapter 200, Subpart F, of Title 2 of the Code of Federal Regulations and GAAS, in a Grantee's audit requires the creation and submission to the City of a corrective action plan formally approved by the Grantee's governing board. The plan must be submitted to the City within 60 days after the audit is submitted to the City. Failure to submit an adequate plan to the City may result in the immediate suspension of funding. If adequate improvement related to the audit findings is not documented within a reasonable period of time, the City may provide additional technical assistance, refer the Agreement to the City Auditor for analysis, or move to terminate the Agreement as specified in Section 5 of the Agreement.

4.5.7 The expiration or termination of this Agreement shall in no way relieve the Grantee of the audit requirement set forth in this Section.

4.5.8 Right To Audit By Office of City Auditor.

4.5.8.1 Grantee agrees that the representatives of the Office of the City Auditor, or other authorized representatives of the City, shall have access to, and the right to audit, examine, and copy any and all records of the Grantee related to the performance under

this Agreement during normal business hours (Monday – Friday, 8 am – 5 pm). In addition to any other rights of termination or suspension set forth herein, the City shall have the right to immediately suspend the Agreement, upon written notice to Grantee, if Grantee fails to cooperate with this audit provision. The Grantee shall retain all such records for a period of 5 years after the expiration or early termination of this Agreement or until all audit and litigation matters that the City has brought to the attention of the Grantee are resolved, whichever is longer. The Grantee agrees to refund to the City any overpayments disclosed by any such audit.

4.5.8.2 Grantee shall include this audit requirement in any subagreements entered into in connection with this Agreement.

SECTION 5. TERMINATION

5.1 **Right To Assurance.** Whenever one party to the Agreement in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

5.2 **Default.** The Grantee shall be in default under the Agreement if the Grantee (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) fails to provide adequate assurance of performance under the "Right to Assurance" paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Grantee's Offer, or in any report or deliverable required to be submitted by Grantee to the City.

5.3 **Termination For Cause.** In the event of a default by the Grantee, the City shall have the right to terminate the Agreement for cause, by written notice effective 10 calendar days, unless otherwise specified, after the date of such notice, unless the Grantee, within such 10 day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Grantee on probation for a specified period of time within which the Grantee must correct any non-compliance issues. Probation shall not normally be for a period of more than 9 months; however, it may be for a longer period, not to exceed 1 year depending on the circumstances. If the City determines the Grantee has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Grantee, the City may suspend or debar the Grantee in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Grantee from the City's vendor list for up to 5 years and any Offer submitted by the Grantee may be disqualified for up to 5 years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Grantee's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

5.4 **Termination Without Cause.** The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon 30 calendar-days prior written notice. Upon receipt of a notice of termination, the Grantee shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Grantee, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

5.5 **Fraud.** Fraudulent statements by the Grantee on any Offer or in any report or deliverable required to be submitted by the Grantee to the City shall be grounds for the termination of the Agreement for cause by the City and may result in legal action.

SECTION 6. OTHER DELIVERABLES

6.1 **Insurance.** The following insurance requirements apply:

6.1.1 **General Requirements**

6.1.1.1 The Grantee shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Agreement and during any warranty period.

6.1.1.2 The Grantee shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Agreement execution and within 14 calendar days after written request from the City.

6.1.1.3 The Grantee must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

6.1.1.4 The Grantee shall not commence work until the required insurance is obtained and has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Grantee hereunder and shall not be construed to be a limitation of liability on the part of the Grantee.

6.1.1.5 The Grantee must maintain and make available to the City, upon request, Certificates of Insurance for all Subgrantees.

6.1.1.6 The Grantee's and all Subgrantees' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

6.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the Grantee's email address, and shall be mailed to the following address:

City of Austin
Austin Public Health
ATTN: Social Services Contracts
P. O. Box 1088
Austin, Texas 78767

6.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Agreement, covering both the City and the Grantee, shall be considered primary coverage as applicable.

6.1.1.9 If insurance policies are not written for amounts specified, the Grantee shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

6.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

6.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Grantee.

6.1.1.12 The Grantee shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.

6.1.1.13 The Grantee shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

6.1.1.14 The Grantee shall endeavor to provide the City 30 calendar-days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.

6.1.2 **Specific Coverage Requirements.** The Grantee shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Agreement, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Grantee.

6.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000* for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

6.1.2.1.1 Blanket contractual liability coverage for liability assumed under the Agreement and all other Agreements related to the project

6.1.2.1.2 Independent Grantee's Coverage

6.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period

6.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage

6.1.2.1.5 Thirty (30) calendar-days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage

6.1.2.1.6 The "City of Austin" listed as an additional insured, Endorsement CG 2010, or equivalent coverage

6.1.2.1.7 If care of a child is provided outside the presence of a legal guardian or parent, Grantee shall provide coverage for sexual abuse and molestation for a minimum limit of \$500,000 per occurrence.

6.1.2.1.8 The policy shall be endorsed to cover injury to a child while the child is in the care of the Grantee or Subgrantee.

* Supplemental Insurance Requirement. If eldercare, childcare, or housing for clients is provided, the required limits shall be \$1,000,000 per occurrence.

6.1.2.2 Business Automobile Liability Insurance.

Minimum limits: \$500,000 combined single limit per occurrence for all owned, hired and non-owned autos

- a. a. If any form of transportation for clients is provided, coverage for all owned, non-owned, and hired vehicles shall be maintained with a combined single limit of \$1,000,000 per occurrence.
- b. If Grantee does not own any vehicles, a signed "Hired & Non-Owned Auto" Statement may be provided in conjunction with evidence of non-owned and hired Business Automobile Liability Insurance coverage.
- c. b. If no client transportation is provided but autos are used within the scope of work, and there are no agency owned vehicles, evidence of Personal Auto Policy coverage from each person using their auto may be provided. The following limits apply for personal auto insurance: \$100,000/\$300,000/\$100,000.

All policies shall contain the following endorsements:

- 6.1.2.2.1. Waiver of Subrogation, Endorsement CA 0444, or equivalent coverage
- 6.1.2.2.2. Thirty (30) calendar-days' Notice of Cancellation, Endorsement CA 0244, or equivalent coverage
- 6.1.2.2.3 The "City of Austin" listed as an additional insured, Endorsement CA 2048, or equivalent coverage

6.1.2.3 Worker's Compensation and Employers' Liability Insurance. Coverage is required of Grantees providing services on City owned or leased property, and shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

- 6.1.2.3.1 The Grantee's policy shall apply to the State of Texas
- 6.1.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage
- 6.1.2.3.3 Thirty (30) calendar-days' Notice of Cancellation, Form WC 420601, or equivalent coverage

6.1.2.4 Professional Liability Insurance.

6.1.2.4.1 Grantee shall provide coverage at a minimum limit of \$500,000 per claim to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

6.1.2.4.2 If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Agreement and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the Agreement.

6.1.2.5 **Blanket Crime Policy Insurance.** A Blanket Crime Policy shall be required with limits equal to or greater than the sum of all Agreement funds allocated annually by the City. Acceptance of alternative limits shall be approved by Risk Management.

6.1.2.6 **Directors and Officers Insurance.** Directors and Officers Insurance with a minimum of not less than \$1,000,000 per claim shall be in place for protection from claims arising out of negligent acts, errors or omissions for directors and officers while acting in their capacities as such. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The coverage shall be continuous for the duration of the Agreement and for not less than 24 months following the end of the Agreement. Coverage, including renewals, shall have the same retroactive date as the original policy applicable to the Agreement or evidence of prior acts or an extended reporting period acceptable to the City may be provided. The Grantee shall, on at least an annual basis, provide the City with a Certificate of Insurance as evidence of such insurance.

6.1.2.7 **Property Insurance.** If the Agreement provides funding for the purchase of property or equipment the Grantee shall provide evidence of all risk property insurance for a value equivalent to the replacement cost of the property or equipment.

6.1.2.8 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents, must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

6.1.2.9 **Certificate.** The following statement must be shown on the Certificate of Insurance.

"The City of Austin is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability, auto liability and workers compensation policies."

6.2 **Equal Opportunity.**

6.2.1 **Equal Employment Opportunity.** No Grantee or Grantee's agent shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Agreement awarded by the City unless the Grantee has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Grantee shall sign and return the Non-Discrimination Certification attached hereto as Exhibit C. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Agreement and the Grantee's suspension or debarment from participation on future City Agreements until deemed compliant with Chapter 5-4. Any Subgrantees used in the performance of this Agreement and paid with City funds must comply with the same nondiscrimination requirements as the Grantee.

6.2.2 **Americans with Disabilities Act (ADA) Compliance.** No Grantee, or Grantee's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

6.3 **Inspection of Premises.** The City has the right to enter Grantee's and Subgrantee's work facilities and premises during Grantee's regular work hours, and Grantee agrees to facilitate a review of the facilities upon reasonable request by the City.

6.4 **Rights to Proposal and Contractual Material.** All material submitted by the Grantee to the City shall become property of the City upon receipt. Any portions of such material claimed by the Grantee to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

6.5 **Publications.** All published material and written reports submitted under the Agreement must be originally developed material unless otherwise specifically provided in the Agreement. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 7. WARRANTIES

7.1 **Authority.** Each party warrants and represents to the other that the person signing this Agreement on its behalf is authorized to do so, that it has taken all action necessary to approve this Agreement, and that this Agreement is a lawful and binding obligation of the party.

7.2 **Performance Standards.** Grantee warrants and represents that all services provided under this Agreement shall be fully and timely performed in a good and workmanlike manner in accordance with generally accepted community standards and, if applicable, professional standards and practices. Grantee may not limit, exclude, or disclaim this warranty or any warranty implied by law, and any attempt to do so shall be without force or effect. If the Grantee is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Agreement from the Grantee, and purchase conforming services from other sources. In such event, the Grantee shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source. Grantee agrees to participate with City staff to update the performance measures.

SECTION 8. MISCELLANEOUS

8.1 **Criminal Background Checks.** Grantee and Subgrantee(s) agree to perform a criminal background check on individuals providing direct client services in programs designed for children under 18 years of age, seniors 55 years of age and older, or persons with Intellectual and Developmental Disabilities (IDD). Grantee shall not assign or allow an individual to provide direct client service in programs designed for children under 18 years of age, seniors 55 years of age and older, or persons with IDD if the individual would be barred from contact under the applicable program rules established by Title 40 of the Texas Administrative Code.

8.1.1 In accordance with the Grantee's personnel and records retention policies, the Grantee shall retain documentation that a criminal background check was completed.

8.2 **Compliance with Health, Safety, and Environmental Regulations.** The Grantee, its Subgrantees, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety

and Health Administration (OSHA), and those found in the Clean Air Act (42 U.S.C. 7401–7671q), the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387), and the Energy Policy and Conservation Act (42 U.S.C. 6201). In case of conflict, the most stringent safety requirement shall govern. The Grantee shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Grantee's obligations under this paragraph.

8.2.1 The Grantee or Subgrantee(s) seeking an exemption for a food enterprise permit fee must present this signed and executed social services Agreement upon request to the City.
(Source: City of Austin Ordinance 20051201-013)

8.3 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Grantee is observed performing in a manner that the City reasonably believes is in violation of federal, state, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Grantee will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Grantee shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

8.4 **Indemnity.**

8.4.1 Definitions:

8.4.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

8.4.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Grantee, their respective agents, officers, employees and Subgrantees; the officers, agents, and employees of such Subgrantees; and third parties); and/or;

8.4.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Grantee, the Grantee's Subgrantees, and third parties),

8.4.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

8.4.2 THE GRANTEE SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE GRANTEE, OR THE GRANTEE'S AGENTS, EMPLOYEES OR SUBGRANTEES, IN THE PERFORMANCE OF THE GRANTEE'S OBLIGATIONS UNDER THE AGREEMENT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE GRANTEE (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

8.5 **Claims.** If any claim, demand, suit, or other action is asserted against the Grantee which arises under or concerns the Agreement, or which could have a material adverse effect on the Grantee's ability to perform hereunder, the Grantee shall give written notice thereof to the City within 10 calendar days after receipt of notice by the Grantee. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be

delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

8.6 Business Continuity. Grantee warrants that it has adopted a business continuity plan that describes how Grantee will continue to provide services in the event of an emergency or other unforeseen event, and agrees to maintain the plan on file for review by the City. Grantee shall provide a copy of the plan to the City's Contract Manager upon request at any time during the term of this Agreement, and the requested information regarding the Business Continuity Plan shall appear in the annual AAP documentation.

8.6.1 Grantee agrees to participate in the City's Emergency Preparedness and Response Plan and other disaster planning processes. Grantee participation includes assisting the City to provide disaster response and recovery assistance to individuals and families impacted by manmade or natural disasters.

8.7 Notices. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Agreement shall be in writing and shall be deemed delivered 3 business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, email, or other commercially accepted means. Notices to the City and the Grantee shall be addressed as follows:

To the City:
City of Austin
Austin Public Health
Health Equity and Community
Engagement Division
ATTN: Adrienne Sturup,
Assistant Director
7201 Levander Loop, Bldg. E
Austin, TX 78702

To the Grantee:
Front Steps, Inc.

ATTN: Amy Temperly,
Interim Executive Director
500 E. 7th Street
Austin, TX 78701

With copy to:
City of Austin
Austin Public Health

ATTN: Stephanie Hayden,
Director
7201 Levander Loop, Bldg. E
Austin, TX 78702

8.8 Confidentiality. In order to provide the deliverables to the City, Grantee may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Grantee acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Grantee (including its employees, Subgrantees, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Grantee promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Grantee agrees to use protective measures no less stringent than the Grantee uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

8.9 Advertising. Where such action is appropriate as determined by the City, Grantee shall publicize the activities conducted by the Grantee under this Agreement. Any news release, sign, brochure, or other advertising medium including websites disseminating information prepared or distributed by or for the Grantee shall recognize the City as a funding source and include a statement that indicates that the information presented does not officially represent the opinion or policy position of the City.

8.10 No Contingent Fees. The Grantee warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Grantee for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Agreement without liability and to deduct from any amounts owed to the Grantee, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

8.11 Gratuities. The City may, by written notice to the Grantee, cancel the Agreement without liability if it is determined by the City that gratuities were offered or given by the Grantee or any agent or representative of the Grantee to any officer or employee of the City with a view toward securing the Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Agreement. In the event the Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Grantee in providing such gratuities.

8.12 Prohibition Against Personal Interest in Agreements. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Agreement resulting from that solicitation. Any willful violation of this Section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Grantee shall render the Agreement voidable by the City.

8.13 Independent Grantee. The Agreement shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Grantee's services shall be those of an independent Grantee. The Grantee agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City.

8.14 Assignment-Delegation. The Agreement shall be binding upon and inure to the benefit of the City and the Grantee and their respective successors and assigns, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Grantee without the prior written consent of the City. Any attempted assignment or delegation by the Grantee shall be void unless made in conformity with this paragraph. The Agreement is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Agreement.

8.15 Waiver. No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Grantee or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

8.16 Modifications. The Agreement can be modified or amended only by a written, signed agreement by both parties. No pre-printed or similar terms on any Grantee invoice, order, or other document shall have any force or effect to change the terms, covenants, and conditions of the Agreement.

8.17 Interpretation. The Agreement is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent

of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control, unless otherwise defined in the Agreement.

8.18 Dispute Resolution.

8.18.1 If a dispute arises out of or relates to the Agreement, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, 1 senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

8.18.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Grantee agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or an Agreement interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Grantee will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

8.19 Minority and Women Owned Business Enterprise (MBE/WBE) Procurement Program

MBE/WBE goals do not apply to this Agreement.

8.20 Living Wage Policy (If Applicable)

The City's Living Wage Program applies to City expenditure and revenue generating non-construction contracts where all of the following apply:

- Contract is predominantly for non-construction services *performed on City Property or on City Vehicles*;
- Contract results from a formal competitive solicitation, procedurally compliant with section 252.021 of the Texas Local Government Code;
- Contract requires authorization by City Council in accordance with Article VII, Finance, Section 15 (Purchase Procedure) of the City Charter; and
- Directly assigned Contractor Employees of the Prime Contractor and all tiers of subcontracting.

8.20.1 The Grantee shall maintain throughout the term of the Agreement basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA).

8.20.2 The Grantee shall provide the Department's Contract Manager with the first invoice, individual Employee Certifications for all employees directly assigned to the Agreement. The City reserves the right to request individual Employee Certifications at any time during the Agreement

term. Employee Certifications shall be signed by each employee directly assigned to the Agreement. The Employee Certification form is available on-line at:
https://www.austintexas.gov/financeonline/vendor_connection/index.cfm.

8.20.3 Grantee shall submit employee certifications annually on the anniversary date of Agreement award with the respective invoice to verify that employees are paid the Living Wage throughout the term of the Agreement. The Employee Certification Forms shall be submitted for employees added to the Agreement and/or to report any employee changes as they occur.

8.20.4 The Department's Contract Manager will periodically review the employee data submitted by the Grantee to verify compliance with this Living Wage provision. The City retains the right to review employee records required in paragraph 8.20.1 above to verify compliance with this provision.

8.21 Subgrantees.

8.21.1 Work performed for the Grantee by a Subgrantee shall be pursuant to a written Agreement between the Grantee and Subgrantee. The terms of the Subagreement may not conflict with the terms of the Agreement, and shall contain provisions that:

8.21.1.1 require that all deliverables to be provided by the Subgrantee be provided in strict accordance with the provisions, specifications and terms of the Agreement. The City may require specific documentation to confirm Subgrantee compliance with all aspects of this Agreement.

8.21.1.2 prohibit the Subgrantee from further subcontracting any portion of the Agreement without the prior written consent of the City and the Grantee. The City may require, as a condition to such further subcontracting, that the Subgrantee post a payment bond in form, substance and amount acceptable to the City;

8.21.1.3 require Subgrantees to submit all requests for payment and applications for payments, including any claims for additional payments, damages or otherwise, to the Grantee in sufficient time to enable the Grantee to include the same with its invoice or application for payment to the City in accordance with the terms of the Agreement;

8.21.1.4 require that all Subgrantees obtain and maintain, throughout the term of their Subagreement, insurance in the type required by this Agreement, and in amounts appropriate for the amount of the Subagreement, with the City being a named insured as its interest shall appear;

8.21.1.5 require that the Subgrantees indemnify and hold the City harmless to the same extent as the Grantee is required to indemnify the City; and

8.21.1.6 maintain and make available to the City, upon request, Certificates of Insurance for all Subgrantees.

8.21.2 The Grantee shall be fully responsible to the City for all acts and omissions of the Subgrantees just as the Grantee is responsible for the Grantee's own acts and omissions. Nothing in the Agreement shall create for the benefit of any such Subgrantee any contractual relationship between the City and any such Subgrantee, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subgrantee except as may otherwise be required by law.

8.21.3 The Grantee shall pay each Subgrantee its appropriate share of payments made to the Grantee not later than 10 days after receipt of payment from the City.

8.22 **Jurisdiction and Venue.** The Agreement is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Agreement shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

8.23 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

8.24 **Holidays.** The following holidays are observed by the City:

<u>HOLIDAY</u>	<u>DATE OBSERVED</u>
New Year's Day	January 1
Martin Luther King, Jr's Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday.
If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

8.25 **Survivability of Obligations.** All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement.

8.26 **Non-Suspension or Debarment Certification.** The City is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from federal, state, or City Agreements. By accepting an Agreement with the City, the Grantee certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the Exclusions records at SAM.gov, the State of Texas, or the City of Austin.

8.27 **Public Information Act.** Grantee acknowledges that the City is required to comply with Chapter 552 of the Texas Government Code (Public Information Act). Under the Public Information Act, this Agreement and all related information within the City's possession or to which the City has access are presumed to be public and will be released unless the information is subject to an exception described in the Public Information Act.

8.28 HIPAA Standards. As applicable, Grantee and Subgrantees are required to develop and maintain administrative safeguards to ensure the confidentiality of all protected client information, for both electronic and non-electronic records, as established in the Health Insurance Portability and Accountability Act (HIPAA) Standards CFR 160 and 164, and to comply with all other applicable federal, state, and local laws and policies applicable to the confidentiality of protected client information. Grantee must maintain HIPAA-compliant Business Associate agreements with each entity with which it may share any protected client information.

8.28.1 Business Associate Agreement. If performance of this Agreement involves the use or disclosure of Protected Health Information (PHI), as that term is defined in 45 C.F.R. § 160.103, then Grantee acknowledges and agrees to comply with the terms and conditions contained in the Business Associate Agreement, attached as Exhibit E.

8.29 Political and Sectarian Activity. No portion of the funds received by the Grantee under this Agreement shall be used for any political activity (including, but not limited to, any activity to further the election or defeat of any candidate for public office) or any activity undertaken to influence the passage, defeat, or final content of legislation; or for any sectarian or religious purposes.

8.30 Culturally and Linguistically Appropriate Standards (CLAS). The City is committed to providing effective, equitable, understandable and respectful quality care and services that are responsive to diverse cultural beliefs and practices, preferred languages, health literacy, and other communication needs. This commitment applies to services provided directly by the City as well as services provided through its Grantees. Grantee and its Subgrantees agree to implement processes and services in a manner that is culturally and linguistically appropriate and competent. Guidance on adopting such standards and practices are available at the U.S. Department of Health and Human Services Office of Minority Health's website at:
<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=1&lvlid=6>

In some instances, failure to provide language assistance services may have the effect of discriminating against persons on the basis of their natural origin. Guidelines for serving individuals with Limited English Proficiency (LEP) are available at <https://www.lep.gov/faqs/faqs.html>

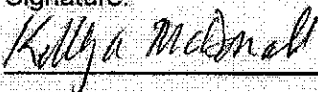
8.31 Entire Agreement. This Contract, together with the attached Exhibits, and any addenda and amendments thereto constitute the entire agreement between the parties, and this Contract shall not be modified, amended, altered, or changed except with the written consent of the parties.

5.0 By signing this Amendment, the Grantee certifies that the Grantee and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the Exclusion records found at SAM.gov, the State of Texas, or the City of Austin.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced Agreement.

GRANTEE

Signature:



Social Services Agreement Amendment

CITY OF AUSTIN

Signature:



FRONT STEPS, INC.
Kelly McDonald, Board President
500 E. 7th Street
Austin, TX 78701

City of Austin
Purchasing Office
PO Box 1088
Austin, TX 78767

Date: October 21, 2020

Date: 11/17/2020

DEFINITIONS

Agreement/Contract- General terms for a legally-binding undertaking between two parties that describes the terms, conditions, and specifications of the obligations, relationships, and responsibilities between them, and any related addenda and amendments. City of Austin Social Services Contracts are considered to be grant agreements, but commonly referred to as contracts. The terms are interchangeable throughout this Agreement.

Exhibit- An attachment to the agreement that is either programmatic (Program Exhibit) or contains additional terms and conditions (Standard Exhibit). Program Exhibits provide the detailed information for the program the City is funding through the Agreement.

Governmental Entity- An organization that is a unit of government, institution of higher education, or local taxing authority, such as a school district. Also includes quasi-governmental organizations, such as a local mental health authority.

Grantee- A vendor agency that has entered into a Social Services grant agreement with the City to provide social services to the community.

Reimbursable Agreement- An Agreement where an agency is reimbursed for expenses incurred and paid through the provision of adequate supporting documentation that verifies the expenses.

Subgrantee- An agency that has entered into a subagreement with a Grantee to provide direct client services under a Social Services Agreement, who is paid with City funds by the Grantee, and who must report program performance information to the Grantee for individuals served who are not existing clients of the Grantee for the contracted program. The Subgrantee is subject to the same terms and conditions in the Grantee's Social Services Agreement with the City.

Program Work Statement

Program Goals and Objectives

Based on the belief that all people deserve the dignity of a safe place to call home, Front Steps' mission is to provide a pathway home for our neighbors experiencing homelessness by offering emergency shelter, affordable housing, recuperative medical care, supportive services, and promote community awareness. Having this mission in mind, Front Steps manages the ARCH facility to serve multiple purposes, including: operating a safe and clean shelter that provides a respite from the elements, functioning as a place for clients to meet several of their basic needs, and serving as an entry portal to a variety of programs and services dedicated to assisting and empowering clients to achieve self-sufficiency and resolve their homelessness as rapidly as possible.

Program Clients Served

Front Steps uses the U.S. Department of Housing and Urban Development (HUD) definition of "homelessness" to verify that persons receiving Emergency Solutions Grant (ESG)-funded services live in a situation described by HUD as "homeless," and Front Steps also uses the federal definition of "chronically homeless" to determine if persons receiving ESG-funded services are classified as "chronically homeless." Front Steps documents clients' eligibility and classification using HUD's definitions on a "Homeless Eligibility Form" approved by the City of Austin. Front Steps is aware of continuing changes in the definition of chronic homelessness as a result of the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act and receives and discusses updates regularly at Continuum of Care (CoC) meetings within the community.

Compliance with APH Eligibility Criteria: The eligibility criteria for the program is homelessness, so the agency will ensure that all client files contain a Homeless Eligibility form and are entered into HMIS. Identity, residency, and income requirements, as well as annual recertification of homelessness are not required for shelter clients.

Program Services and Delivery

The City of Austin receives Emergency Solutions Grants (ESG) funds from the Department of Housing and Urban Development to provide Emergency Shelter at the Austin Resource Center for the Homeless. Eligible costs include: Maintenance, rent, security, fuel, equipment, insurance, utilities, food, furnishings, supplies necessary for shelter operation and hotel/motel vouchers. The City of Austin uses ESG funds for shelter maintenance, security staff, and food. Because of timeline considerations specific to grants, all claims will be due on the 15th of each month following the end of the month being reported on, if the 15th of the month falls on a weekend or holiday, the claim will be due on the first business day after the 15th.

Emergency Night Shelter: The overnight shelter is available for single, adult men experiencing homelessness. There are 90 sleeping mats and 100 bunks for a total of 190 sleeping units. Front Steps serves dinner to all who utilize ENS. A light breakfast is available to all ARCH overnight clients, depending upon available funding.

Maintenance and Operations of the Austin Resource Center for the Homeless

The City of Austin - Austin Public Health Department (APH) contracts with Front Steps to serve as the operator of the Austin Resource Center for the Homeless (ARCH), located at 500 East 7th Street, Austin, TX 78701.

Program Work Statement

As the operator of the ARCH, Front Steps is responsible for overall operations, maintenance, and oversight of the facility, as well as the activities located therein. Front Steps manages a preventative maintenance schedule and submits updated maintenance reports on a monthly to APH staff for review.

Front Steps is not responsible for managing the lease between the City of Austin and the Healthcare District for the operation of the Health Care for the Homeless ARCH CommUnityCare Clinic.

System for Collecting and Reporting Program Data

All program data will be collected and reported through the ARCH Agreement. Front Steps will provide required quarterly performance reporting, end of year reporting and a monthly "HMIS Data Quality Report" with each submitted pay request.

Performance Evaluation

Program Evaluation will be addressed in the ARCH Agreement.

Quality Improvement

Quality improvement systems will be addressed in the ARCH Agreement.

Service Coordination with Other Agencies

Front Steps will address service cooperation in the ARCH Agreement

Service Collaboration with Subgrantees

No collaborations are funded by this contract.

Community Planning Activities

Designated Front Steps' directors, managers and coordinators are members of the following ECHO committees and subcommittees: Executive, Membership, Program and Evaluation, HMIS, Continuum of Care, Veterans, Housing, and Education. Front Steps has participated in planning efforts regarding the City Council's efforts to create more affordable housing, the local 100,000 Homes Campaign, Ending Veteran Homelessness, Ending Youth Homelessness, Downtown Homeless Solutions, and other planning efforts. Front Steps also works collaboratively with the Downtown Austin Alliance, Sixth Street Association and Downtown Neighborhood Association on a variety of issues and initiatives such as the "I Live Here I Give Here" public education campaign that encourages people to give responsibly. In addition to these activities the Front Steps' Good Neighbor Program provides additional day resources to encourage those experiencing homelessness to utilize the ARCH during the day rather than panhandling and congregating in heavily trafficked downtown areas. Front Steps works closely with ECHO and other community partners in gathering public support of PSH and delivery of HUD-funded housing.

Program Budget and Narrative

Contract Term: 10/01/2018 - 09/30/2021

Program Period: 10/01/2020 - 09/30/2021

	City Funds	Other Funds	Total
Personnel			
Salaries	\$98,194.00	\$0.00	\$98,194.00
Fringe and Payroll Taxes	\$0.00	\$0.00	\$0.00
	\$98,194.00	\$0.00	\$98,194.00
Operations			
General Operations	\$130,342.00	\$0.00	\$130,342.00
Outsourced Professional Services	\$0.00	\$0.00	\$0.00
Supplemental Programmatic Services	\$0.00	\$0.00	\$0.00
Training/Travel Outside Austin and/or Travis County	\$0.00	\$0.00	\$0.00
	\$130,342.00	\$0.00	\$130,342.00
Assistance to Clients			
Rental/Mortgage Assistance	\$0.00	\$0.00	\$0.00
General Housing Assistance	\$0.00	\$0.00	\$0.00
Direct Client Assistance	\$0.00	\$0.00	\$0.00
Client Food and Beverage	\$85,386.00	\$0.00	\$85,386.00
	\$85,386.00	\$0.00	\$85,386.00
Capital Outlay			
Capital Outlay - \$5,000.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
Deliverables Amount			
Deliverables Amount	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
Subgrantees/Subrecipients			
Personnel-Sub	\$0.00	\$0.00	\$0.00
Operations-Sub	\$0.00	\$0.00	\$0.00
Direct Client Assistance-Sub	\$0.00	\$0.00	\$0.00
Other-Sub	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
Program Income			
Program Income (Zero dollars budgeted for monthly credit)	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
Other			
Other	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
Total	\$313,922.00	\$0.00	\$313,922.00

Program Budget and Narrative

Personnel

Maintenance staff for emergency shelter operations

Operations

Security Guards for Shelter

Assistance to Clients

Food for clients in the overnight shelter

Capital Outlay

Deliverables Amount

Program Subgrantees

Program Income

Other



City of Austin

Social Services Compensation Terms

1. The Grantee shall expend City funds according to the approved budget categories described in Exhibit B.1, Program Budget and Narrative, or Exhibit A.1, Program Work Statement (Deliverables), as applicable.

2. **Request for Payment**

Payment to the Grantee shall be due 30 calendar days following receipt by the City of the Grantee's fully and accurately completed payment request, using the City's contract management system. The payment request must be submitted to the City no later than 11:59 p.m. Central Standard Time 25 calendar days following the end of the month covered by the payment request. **If the 25th calendar day falls on a weekend or holiday, as outlined in Section 8.24, the deadline to submit the payment request is extended to no later than 11:59 p.m. Central Standard Time of the 1st weekday immediately following the weekend or holiday.**

3. **Documentation**

3.1. **FOR DELIVERABLE AGREEMENTS:** Grantee must provide the City with supporting documentation as described in Exhibit A.1, Program Work Statement (Deliverables) for each monthly Payment Request where an agreement deliverable is being submitted.

3.2. **FOR REIMBURSEABLE AGREEMENTS:** Grantee must provide the City with supporting documentation for each monthly payment request which includes, but is not limited to, a report of City Agreement expenditures generated from the Grantee's financial management system.

3.2.1. Appropriate supporting documentation includes:

- General Ledger Detail report from the Grantee's financial management system
- Transaction Detail by Account Report from the Grantee's financial management system
- Other reports that meet all of the following specifications:
 - produced from the Grantee's accounting system with no manual changes or adjustments
 - submitted in PDF format
 - includes date the report was created
 - demonstrates specific expenses for which reimbursement is being requested
 - demonstrates that City of Austin funds are maintained in a separate numbered bank account or standalone general operating account that includes only City expenses and reimbursements.

4. **Right of Final Approval.**

The City retains right of final approval of any supporting documentation submitted before a payment request is approved for processing. Failure to provide supporting documentation acceptable to the City may result in delay or rejection of the payment request. The City reserves the right to modify the required supporting documentation, as needed.

4.1 Unless otherwise expressly authorized in the Agreement, the Grantee shall pass through all Subagreement and other authorized expenses at actual cost without markup.

4.2 Federal excise taxes, state taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

5. Payment.

5.1 All requests accepted and approved for payment by the City will be paid within 30 calendar days of the City's receipt of the deliverables or of the invoice, whichever is later. Requests for payment received without the information required in Section 3 cannot be processed, will be returned to the Grantee, and City will make no payment in connection with such request.

5.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until 10 calendar days after the grounds for withholding payment have been resolved.

5.3 The City may withhold or set off the entire payment or part of any payment otherwise due the Grantee to such extent as may be necessary on account of;

5.3.1 delivery of unsatisfactory services by the Grantee;

5.3.2 third party claims, which are not covered by the insurance which the Grantee is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

5.3.3 failure of the Grantee to pay Subgrantees, or for labor, materials or equipment,

5.3.4 damage to the property of the City or the City's agents, employees or Grantees, which is not covered by insurance required to be provided by the Grantee;

5.3.5 reasonable evidence that the Grantee's obligations will not be completed within the time specified in the Agreement, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

5.3.6 failure of the Grantee to submit proper payment requests with all required attachments and supporting documentation;

5.3.7 failure of the Grantee to comply with any material provision of the Agreement; or

5.3.8 identification of previously reimbursed expenses determined to be unallowable after payment was made.

5.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City. Payment will be made by check unless the parties mutually agree to payment by electronic transfer of funds.

6. Non-Appropriation. The awarding or continuation of this Agreement is dependent upon the availability of funding and authorization by Council. The City's payment obligations are payable only and solely from funds appropriated and available for this Agreement. The absence of appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not appropriated or available and any deliverables delivered but unpaid shall be returned to the Grantee. The City shall provide the Grantee written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Agreement. In the event of non- or inadequate appropriation of funds, there will be no penalty or removal fees charged to the City.

7. **Travel Expenses** All approved travel, lodging, and per diem expenses in connection with the Agreement for which reimbursement may be claimed by the Grantee under the terms of the Agreement will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (Rates) as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. No reimbursement will be made for expenses not actually incurred. Airline fares other than coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

8. **Final Payment and Close-Out**

8.2 The making and acceptance of final payment will constitute:

8.2.1 a waiver of all claims by the City against the Grantee, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Grantee to comply with the Agreement or the terms of any warranty specified herein, regardless of when the cause for a claim is discovered (4) arising from the Grantee's continuing obligations under the Agreement, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

8.2.2 a waiver of all claims by the Grantee against the City other than those previously asserted in writing and not yet settled.

9. **Financial Terms**

9.2 The City agrees to pay Grantee for services rendered under this Agreement and to reimburse Grantee for actual, eligible expenses incurred and paid in accordance with all terms and conditions of this Agreement. The City shall not be liable to Grantee for any costs incurred by Grantee which are not reimbursable as set forth in Section 10 of this Exhibit.

9.3 The City's obligation to pay is subject to the timely receipt of complete and accurate reports as set forth in Section 3 of the Agreement, and any other deliverable required under this Agreement.

9.4 Payments to the Grantee will immediately be suspended upon the occasion of any late, incomplete, or inaccurate report, audit, or other required report or deliverable under this Agreement, and payments will not be resumed until the Grantee is in full compliance.

9.5 The City shall not be liable to Grantee for any costs which have been paid under other agreements or from other funds. In addition, the City shall not be liable for any costs incurred by Grantee which were: a) incurred prior to the effective date of this Agreement or outside the Agreement period as referenced in Section 2.1, or b) not billed to the City within 5 business days before the due date for the Grantee's annual Contract Progress Report or Contract Closeout Summary Report, whichever is applicable.

9.6 Grantee agrees to refund to the City any funds paid under this Agreement which the City determines have resulted in overpayment to Grantee or which the City determines have not been spent by Grantee in accordance with the terms of this Agreement. Refunds shall be made by Grantee within 30 calendar days after a written refund request is submitted by the City. The City may, at its discretion, offset refunds due from any payment due Grantee, and the City may also deduct any loss, cost, or expense caused by Grantee from funds otherwise due.

9.7 Grantee shall deposit and maintain all funds received under this Agreement in either a separate numbered bank account or a general operating account, either of which shall be supported with

the maintenance of a separate accounting with a specific chart which reflects specific revenues and expenditures for the monies received under this Agreement. The Grantee's accounting system must identify the specific expenditures, or portions of expenditures, against which funds under this Agreement are disbursed. Grantee must be able to produce an accounting system-generated report of exact expenses or portions of expenses charged to the City for any given time period.

- 9.8 Grantee is required to utilize an online Agreement management system for billing and reporting in accordance with the City's guidelines, policies, and procedures. Grantee is responsible for all data entered/edited under its unique username, as well as all required but omitted data.
- 9.9 Grantee shall expend the City budget in a reasonable manner in relation to Agreement time elapsed and/or Agreement program service delivery schedule. If cumulative expenditures are not within acceptable amounts, the City may require the Grantee to: 1) submit an expenditure plan, and/or 2) amend the Agreement budget amount to reflect projected expenditures, as determined by the City.

10. Allowable and Unallowable Costs

The City shall make the final determination of whether a cost is allowable or unallowable under this Agreement.

- 10.1 **Reimbursement Only.** Expenses and/or expenditures shall be considered reimbursable only if incurred during the current Program Period identified in the attached Program Exhibits, directly and specifically in the performance of this Agreement, and in conformance with the Agreement Exhibits. Grantee agrees that, unless otherwise specifically provided for in this Agreement, payment by the City under the terms of this Agreement is made on a reimbursement basis only; Grantee must have incurred and paid costs prior to those costs being invoiced and considered allowable under this Agreement and subject to payment by the City. Expenses incurred during the Program Period may be paid up to 30 days after the end of the Program Period and included in the Final Payment Request for the Program Period, which shall be due no later than 11:59 p.m. CST 5 calendar days before the due date for the Grantee's annual Contract Progress Report or Contract Closeout Summary Report, whichever is applicable.

- 10.1.1 To be allowable under this Agreement, a cost must meet all of the following general criteria:

- Be reasonable for the performance of the activity under the Agreement
- Conform to any limitations or exclusions set forth in this Agreement
- Be consistent with policies and procedures that apply uniformly to both government- financed and other activities of the organization
- Be determined and accounted in accordance with generally accepted accounting principles (GAAP)
- Be adequately documented

- 10.2 The City's prior written authorization is required in order for the following to be considered allowable costs. Inclusion in the budget within this Agreement constitutes "written authorization." The item shall be specifically identified in the budget. The City shall have the authority to make the final determination as to whether an expense is an allowable cost.

1. Alteration, construction, or relocation of facilities;
2. Cash payments, including cash equivalent gift cards such as Visa, MasterCard, and American Express;
3. Equipment and other capital expenditures;

4. Interest, other than mortgage interest as part of a pre-approved budget under this Agreement;
5. Organization costs (costs in connection with the establishment or reorganization of an organization);
6. Purchases of tangible, nonexpendable property, including fax machines, stereo systems, cameras, video recorder/players, microcomputers, software, printers, microscopes, oscilloscopes, centrifuges, balances and incubator, or any other item having a useful life of more than one year and an acquisition cost, including freight, of over \$5,000;
7. Selling and marketing; or
8. Travel/training outside Travis County.

10.3 The following types of expenses are specifically **not allowable** with City funds under this Agreement. The City shall have the authority to make the final determination as to whether an expense is an allowable cost.

1. Alcoholic beverages;
2. Bad debts;
3. Compensation of trustees, directors, officers, or advisory board members, other than those acting in an executive capacity;
4. Contingency provisions (funds) (*Self-insurance reserves and pension funds are allowable*);
5. Defense and prosecution of criminal and civil proceedings, claims, appeals, and patent infringement;
6. Deferred costs;
7. Depreciation;
8. Donations and contributions, including donated goods or space;
9. Entertainment costs, other than expenses related to client incentives;
10. Fines and penalties (including late fees);
11. Fundraising and development costs;
12. Goods or services for officers' or employees' personal use;
13. Housing and personal living expenses for organization's officers or employees;
14. Idle facilities and idle capacity;
15. Litigation-related expenses (including personnel costs) in action(s) naming the City as a Defendant;
16. Lobbying or other expenses related to political activity;
17. Losses on other agreements or casualty losses;
18. Public relations costs, except reasonable, pre-approved advertising costs related directly to services provided under this Agreement;
19. Taxes, other than payroll and other personnel-related levies; or
20. Travel outside of the United States of America.

11. Ownership of Property.

11.1 Ownership title to all capital acquisition, supplies, materials or any other property purchased with funds received under this Agreement and in accordance with the provisions of the Agreement, purchased with City funds shall convey to the Grantee 2 years after purchase, unless notified by the City in writing.

11.1.1 If the services funded by this Agreement are provided in a facility owned by the City or leased from the Travis County, , ownership title to all capital acquisition, supplies, materials or any other property purchased with funds received under this Agreement shall remain with the City.

11.2 Written notification must be given to the City within 5 calendar days of delivery of nonexpendable property (defined as anything that has a life or utility of more than 1 year and an acquisition cost, including freight, of over \$5,000) in order for the City to effect identification and recording for inventory purposes. Grantee shall maintain adequate accountability and control over such property, maintain adequate property records, perform an annual physical inventory of all such property, and report this information in the Annual Agreement Progress Report, due as indicated in Section 4.2.3 of the Agreement, as well as in the Agreement Closeout Summary Report, as indicated in Section 4.2.4 of the Agreement.

11.3 In the event Grantee's services are retained under a subsequent agreement, and should Grantee satisfactorily perform its obligations under this Agreement, Grantee shall be able to retain possession of non-expendable property purchased under this Agreement for the duration of the subsequent agreement.

City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION,
ISRAEL VERIFICATION, INTERESTED PARTIES, CONFLICTS OF INTEREST

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer,

demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 26th day of October, 2020

CONTRACTOR

Authorized
Signature

Title

Front Steps, Inc.



Director of Development
and Communications

PROHIBITION OF BOYCOTT OF ISRAEL VERIFICATION

Pursuant to Texas Government Code §2271.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this Contract:

- A. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code §2271.001.
- B. If the Grantee qualifies as a "company", then the Principal Artist verifies that he:
 - i. does not "boycott Israel"; and
 - ii. will not "boycott Israel" during the term of this Contract.
- C. The Grantee's obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2271 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

A COURT OF COMPETENT JURISDICTION HAS RECENTLY ENJOINED THE ABOVE STATE LAW. HOWEVER, IF THIS INJUNCTION IS LIFTED OR STAYED BY A COURT OR OTHER ENTITY OF COMPETENT JURISDICTION, THIS SECTION WILL BE AN ENFORCEABLE AND REQUIRED TERM OF YOUR CONTRACT WITH THE CITY. IF YOU DISAGREE WITH THE ABOVE SECTION OF THE CONTRACT, PLEASE STRIKE THROUGH IT OR INDICATE YOUR OBJECTION IN THE EXCEPTIONS SECTION. YOUR CONTRACT WILL NOT BE AFFECTED BY STRIKING THROUGH THIS PROVISION, AT THIS TIME.

INTERESTED PARTIES DISCLOSURE (FORM 1295)

As a condition to entering the Contract, the Business Entity constituting the Grantee must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring City Council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will verify the "Certificate of Interested Parties" with the Texas Ethics Commission prior to execution of the Agreement. The Grantee is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

CHAPTER 176 CONFLICT OF INTEREST DISCLOSURE

In accordance with Chapter 176 of the Texas Local Government Code, Grantee must file a Conflict of Interest Questionnaire (Questionnaire) with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7th) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City, and update the questionnaire not later than seven (7) business days after becoming aware of an event that would make a statement in the questionnaire incomplete or inaccurate. Grantee has a continuing obligation to file the Questionnaire in accordance with the requirements of Chapter 176 of the Texas Local Government Code once it becomes aware of a need to do so. The Questionnaire is available on line at the following website for the City Clerk:

<http://www.austintexas.gov/departments/conflict-interest-questionnaire>

There are statutory penalties for failure to comply with Chapter 176.



CITY OF AUSTIN
Austin Public Health Department

EMERGENCY SOLUTIONS GRANT PROGRAM (ESG)
PROGRAM STANDARDS AND POLICIES AND PROCEDURES

Table of Contents

SECTION 1: ESG PROGRAM STANDARDS	2
I. Definitions	2
II. General.....	4
III. Eligible Organizations	4
IV. Ineligible Organizations.....	4
V. Financial Terms	5
VI. Matching Funds	5
VII. Eligible Activities	6
VIII. Client Eligibility	6
ESG Eligibility Documentation.....	6
Confidentiality of Client Information.....	6
IX. Emergency Shelter.....	7
X. Rapid Rehousing and Other ESG-funded Services	8
ESG Rapid Rehousing Financial Assistance Guidelines:.....	9
Short-term and medium-term rental assistance	9
XI. Coordination Between Service Providers	11
XII. Homeless Management Information System (HMIS)	12
SECTION 2: ESG POLICIES AND PROCEDURES	14
I. Grant Subaward Process	14
II. Contracting	14
III. Internal Controls	14
IV. Recordkeeping Requirements	15
V. Reporting Requirements	17
VI. Program Limitations	19
VII. Performance Standards	19
VIII. Accessibility	20

SECTION 1: ESG PROGRAM STANDARDS

I. Definitions

The Terms used herein will have the following meanings:

APH – Austin Public Health

At Risk of Homelessness-

- 1) An individual or family who:
 - a) Has an annual income below 30% of median family income for the area; AND
 - b) Does not have sufficient resources or support networks immediately available to prevent them from moving to an emergency shelter or another place defined in Category 1 of the “homeless” definition; AND one of the following conditions:
 - i. Has moved because of economic reasons 2 or more times during the 60 days immediately preceding the application for assistance; OR
 - ii. Is living in the home of another because of economic hardship; OR
 - iii. Has been notified that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance; OR
 - iv. Lives in a hotel or motel and the cost is not paid for by charitable organizations or by Federal, State, or local government programs for low-income individuals; OR
 - v. Lives in an SRO or efficiency apartment unit in which there reside more than 2 persons or lives in a larger housing unit in which there reside more than one and a half persons per room; OR
 - vi. Is exiting a publicly funded institution or system of care; OR
 - vii. Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient’s approved Consolidated Plan;
- 2) A child or youth who does not qualify as homeless under the homeless definition, but qualifies as homeless under another Federal statute; An unaccompanied youth who does not qualify as homeless under the homeless definition, but qualifies as homeless under section 725(2) of the McKinney-Vento Homeless Assistance Act, and the parent(s) or guardian(s) or that child or youth if living with him or her.

CDO- Community Development Officer;

Chronically Homeless means:

- 1) A “homeless individual or family with a disability,” as defined in section 401(9) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(9)), who:
 - a) Lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and
 - b) Has been homeless and living as described in paragraph (1)(i) of this definition continuously for at least 12 months or on at least 4 separate occasions in the last 3 years, as long as the combined occasions equal at least 12 months and each break in homelessness separating the occasions included at least 7 consecutive nights of not living as described in paragraph (1)(i). Stays in institutional care facilities for fewer than 90 days will not constitute as a break in homelessness, but rather such stays are included in the 12-month total, as long as the individual was living or residing in a place not

meant for human habitation, a safe haven, or an emergency shelter immediately before entering the institutional care facility;

- c) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or
- d) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) or (2) of this definition, including a family whose composition has fluctuated while the head of household has been homeless. (Updated 12-4-15)

City- City of Austin;

ESG- Emergency Solutions Grant program;

Homelessness is defined as:

- 1) Category 1 Literally Homeless - An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
 - a) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
 - b) An individual or family living in a supervised publicly or privately-operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or
 - c) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;
- 2) Category 2 Imminently Losing Primary Nighttime Residence - An individual or family who will imminently lose their primary nighttime residence, provided that:
 - a) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
 - b) No subsequent residence has been identified; and
 - c) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks needed to obtain other permanent housing;
- 3) Category 3 Persistent Housing Instability – People with all of the characteristics below:
 - a) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
 - b) Defined as homeless under other federal statutes (for example the definition used by the Department of Education) who do not otherwise qualify as homeless under HUD's definition;
 - c) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;
 - d) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

- e) Have one or more of the following: chronic disabilities, chronic physical or mental health conditions substance addiction histories of domestic violence or childhood abuse child with a disability two or more barriers to employment, which include - lack of a high school degree or GED - illiteracy - low English proficiency - history of incarceration or detention for criminal activity - history of unstable employment
- 4) Category 4 Fleeing/Attempting to Flee Domestic Violence: Any individual or family who:
 - a) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence
 - b) Has no other residence; and
 - c) Lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, to obtain other permanent housing

HUD- U.S. Department of Housing and Urban Development

NHCD- Neighborhood Housing and Community Development Office

Subrecipient- An organization receiving ESG funds from the City to undertake eligible ESG activities

II. General

The Emergency Solutions Grant Program (ESG), formerly known as the Emergency Shelter Grant Program, is funded through the City's Neighborhood Housing and Community Development Office (NHCD), which is made available by the U.S. Department of Housing and Urban Development (HUD). The City utilizes ESG funds to provide an array of services to assist homeless persons and persons at-risk of homelessness.

The ESG program is designed to be the first step in a continuum of assistance to help clients quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness.

The City's Austin Public Health Department is responsible for the implementation of ESG in compliance with the governing regulations of the ESG program. The City's Neighborhood Housing and Community Development Office (NHCD) is responsible for the planning and administration of the ESG program. The Community Development Officer (CDO) of NHCD has the authority to establish processes, procedures, and criteria for the implementation and operation of the program, and to waive compliance with any provision of these guidelines if s/he determines that to do so does not violate any Federal, state, or local law or regulation, and is in the best interest of the City. Nothing contained, stated, or implied in this document shall be construed to limit the authority of the City to administer and carry out the program by whatever means and in whatever manner it deems appropriate.

III. Eligible Organizations

The subrecipient must be a unit of local government or a private, non-profit organization, as defined by the Internal Revenue Service tax code, evidenced by having a Federal identification number, filed articles of incorporation, and written organizational by-laws.

IV. Ineligible Organizations

An organization will not be eligible to apply for ESG funds if it meets the following conditions:

- 1) Outstanding audit or monitoring findings, unless appropriately addressed by a corrective action plan;
- 2) Current appearance on the List of Suspended and Debarred Contractors
- 3) Terms and conditions of existing contract are not in full compliance;
- 4) History of non-performance with contracts.

V. Financial Terms

- 1) Grantee shall expend the City budget in a reasonable manner in relation to Agreement time elapsed and/or Agreement program service delivery schedule.
- 2) All grant funds allocated must be completely spent down within the 24-month allocation period.
- 3) If the Grantee has a remaining balance at the end of the first twelve-month period, the Grantee must submit a request to spend down remaining balance to the Assistant Director of the Austin Public Health, Health Equity Community Engagement Division (HECE).
- 4) If cumulative expenditures are not within acceptable amounts, spending rates, or in accordance with grant compliance the City may require the Grantee to:
 - a) submit an expenditure plan, and/or
 - b) amend the Agreement budget amount to reflect projected expenditures, as determined by the City.

In order to be eligible for services under the ESG program, clients must meet HUD's definition of homelessness or at-risk of homelessness, and must meet annual income guidelines for homelessness prevention activities.

VI. Matching Funds

Subrecipient organizations that receive ESG funds must provide a dollar for dollar (or 100%) match to their ESG award amount.

- 1) Sources of matching funds include:
 - a) Cash Contributions- Cash expended for allowable costs identified in 2 CFR Part 200. Program Income for the ESG program can also be used as match funds. Match funds are identified in 2CFR Part 200.306
 - b) Non-Cash Contributions- The value of any real property, equipment, goods, or services.
- 2) Funds used to match a previous ESG grant may not be used to match a subsequent award.
- 3) The following requirements apply to matching contributions from a Federal source of funds:
 - a. The recipient must ensure the laws governing any funds to be used as matching contributions do not prohibit those funds from being used to match Emergency Solutions Grant (ESG) funds.
 - b. If ESG funds are used to satisfy the matching requirements of another Federal program, then funding from that program may not be used to satisfy the matching requirements under this section.
 - c. Contributions that have been or will be counted as satisfying a matching requirement of another Federal grant or award may not count as satisfying the matching requirement
- 4) Costs paid by program income shall count toward meeting the recipient's matching requirements, provided the costs are eligible ESG costs that supplement the recipient's ESG program

VII. Eligible Activities

Each sub-recipient will be allocated funding by activity type, and may have multiple activities in one program. The following is a list of eligible activities for the ESG Program:

- 1) Street Outreach- Support services limited to providing emergency care on the streets, including engagement, case management, emergency health and mental health services, and transportation;
- 2) Emergency Shelter- Includes essential services, case management, child care, education, employment, outpatient health services legal services, life skills training, mental health & substance abuse services, transportation, shelter operations, and funding for hotel/motel stays under certain conditions;
- 3) Homeless Prevention- Includes housing relocation & stabilization services and short/medium-term rental assistance for individuals/families who are at risk of homelessness;
- 4) Rapid Re-Housing- Includes housing relocation & stabilization services and short/medium-term rental assistance to help individuals/families move quickly into permanent housing and achieve stability;
- 5) Homeless Management Information System (HMIS) costs; and
- 6) ESG Administration costs.

VIII. Client Eligibility

In order to be eligible for services under the ESG program, clients must meet HUD's definition of homelessness or at-risk of homelessness, and must meet annual income guidelines for homelessness prevention activities.

1) ESG Eligibility Documentation

- a) Homelessness Prevention: This program will not provide Homelessness Prevention Services.
- b) Rapid Re-Housing:
- c) Please refer to the *Homeless Eligibility Form* for more information on documenting homelessness for ESG clients.
- d) Sub-recipient agencies must collect the required supporting documentation requested in the *Homeless Eligibility Form* in order for clients to be considered eligible for services
- e) All eligibility and supporting documentation for Rapid Re-Housing clients must be maintained in each client's file
- f) Clients will be referred to ESG programs through the Coordinated Assessment or Coordinated Entry process.
- g) CDU-Specific Client Eligibility Requirements
 - i. Referral through Coordinated Assessment
 - ii. HIV Positive, homeless individuals
- h) DACC-Specific Eligibility Requirements
 - i. Referral through Coordinated Assessment
- i) Front Steps Specific Eligibility Requirements
 - i. Referral through Coordinated Assessment
 - ii. Targeted to those who sheltered at ARCH and coming from the streets outside the ARCH

2) Confidentiality of Client Information

- a) Subrecipients must have written client confidentiality procedures in their program policies and procedures that conform to items b – d below:

- b) All records containing personally identifying information of any individual or family who applies for and/or receives ESG assistance must be kept secure and confidential.
- c) The address or location of any domestic violence project assisted under ESG shall not be made public.
- d) The address or location of any housing for a program participant shall not be made public.

IX. Emergency Shelter

Requirement: Policies and procedures for admission, diversion, referral and discharge by emergency shelters assisted under ESG, including standards regarding length of stay, if any, and safeguards to meet the safety and shelter needs of special populations.

The ESG-funded emergency shelter, Austin Resource Center for the Homeless, or ARCH is currently limited to those clients in case-management, with 20 beds held open for Emergency Night Shelter for men. The ARCH provides Day Resource Center for enrolled clients. Case Management and other co-located services are provided on-site by the following local service providers.

Sleeping Unit Reservation System: Of the 150 sleeping units, approximately 130 are reserved for those clients in full-time case-management with the remaining 20 held open for Emergency Night Shelter.

There is no length of stay for the shelter, and in case management, the general length is 6 months with evaluation on a case by case basis. Clients are informed that if they have a reservation, but they do not arrive to check in, within a set number of days, their reserved place will be made available to other clients on the waiting list. There are also available beds in coordination with the following participating agencies: CommUnity Care Clinic, Veterans Administration (VA), and Austin/Travis County Integral Care, the local mental health authority. All of these case-managed clients work with their case manager to determine a housing plan and are connected to other resources to find permanent housing. The client is informed of the grievance process, and their end date for services determined on a case by case basis.

Clients are encouraged to work with Case Managers to progress towards personal goals related to obtaining/maintaining sustainable income, exploring viable housing options, and addressing self-care issues that impact progress towards self-sufficiency. Case Management services are based on a Harm Reduction philosophy and the stages in the Trans-theoretical Model of Change. Various techniques, including motivational interviewing, are effectively utilized in working with clients whose needs vary across a spectrum of vulnerability. Men's and women's support groups as well as anger management classes are offered through case management. ARCH clients with domestic violence concerns are offered coordination and referral to appropriate programs on a case by case basis.

Front Steps, the agency administering the ARCH, has been designated as one of the "front doors"/community portals in the Coordinated Assessment process. Using the Vulnerability Index & Service Prioritization Decision Assistance Tool (VI-SPDAT) as part of the Coordinated Assessment process, coupled with more robust data entry into HMIS, clients who score within range and are identified as likely benefitting from receiving Shelter Case Management services will be offered these services as openings in the program become available.

The following is provided in the case that a client is terminated:
Written notice to the participant containing a clear statement of the reason for termination.

A review of the decision, in which the participant is given the opportunity to present written or oral objections before a person other than the person(or subordinate of the person) who made or approved the termination decisions, AND
Prompt written notification to the program participant.

Because the ARCH is a City building, the agencies cannot deny citizens access to the shelter property on a permanent basis.

X. Rapid Rehousing and Other ESG-funded Services

There are no Street Outreach services funded by ESG.

There are no homeless prevention services funded by ESG.

Requirement: Policies and procedures for determining and prioritizing which eligible families and individuals will receive rapid re-housing assistance.

All programs funded through the Emergency Solutions Grant will use Coordinated Entry for referrals for the program in order to serve the most vulnerable Rapid Rehousing clients in the community. Agency eligibility could include, for example, HIV status for the Communicable Disease Unit. All programs help clients go through the Coordinated Entry process to access appropriate referrals and community programs.

Each client will be individually assessed for the amount of Rapid Rehousing using progressive engagement and housing first principles. If a client or family needs continued services and financial assistance past the initial date of entry into the program, agencies will work to address those needs until the client exits the program. Other funding sources will be used to address the other service needs of the client such as case management, housing location or financial and rental assistance as needed.

Requirement: *Standards for determining the type, amount and duration of housing stabilization and/or relocation services to provide a program participant, including the limits on rapid re-housing assistance.*

1) All Rapid Rehousing programs will include the following components:

- a) Housing Stability Plan with Exit Strategy
- b) Progressive Engagement
- c) Coordination with other HUD funded programs and regular review the program's progress towards the HUD benchmarks:
 - i. Reducing the length of time program participants spend homeless;
 - ii. Exiting households to permanent housing, and
 - iii. Limiting returns to homelessness within a year of program exit.

2) Also, all RR programs will provide the following services with ESG funds or with another funding source. If the agency is not able to provide all of these services they will work with a collaborative partner to provide them.

- a) Housing Location
- b) Financial Assistance – Rental, Deposits, Application Fees, etc.
- c) Housing Stability Case Management

3) ESG Rapid Rehousing Financial Assistance Guidelines:

- a) Security Deposits are available for no more than 2 months' rent.
- b) Last Month's Rent is only paid if the last month's rent is necessary for the participant to obtain housing, if it is paid at the same time as the security deposit and first month's rent, and does not exceed one month's rent.
- c) Utility Deposit, Payments and Arrears is paid if it is within 24 month limit, including up to 6 months of utility arrears, and if the utility account is in the name of the participant or if there is proof of responsibility, and is for eligible gas, electric, water and sewage.
- d) Caps on assistance by program:
 - a. Downtown Austin Community Court: Financial Assistance can include up to \$2300 a year in direct financial assistance for all eligible financial assistance and rental assistance funding, with a 24 month cap of \$4600.
 - b. Front Steps: None beyond the regulations above.
 - c. Communicable Disease Unit: Does not administer financial assistance and rental assistance.
- e) Changes in household composition. The limits on the assistance under this section apply to the total assistance an individual receives, either as an individual or as part of a family.
- f) Limit of months of assistance. No client may receive more than 24 months of assistance in a three-year period.
- g) Recertification. Clients will be recertified at least every twelve months to determine ongoing eligibility as per 576.401. Recertification will assess clients to see if they do not have an annual income that exceeds 30% AMI, AND lack sufficient resources and support networks to retain housing without ESG assistance.

Requirement: Standards for determining what percentage or amount of rent and utilities cost each program participant must pay while receiving rapid re-housing assistance.

Most clients receiving financial assistance through the Emergency Solutions Grant will have high housing barriers and will be highly vulnerable. Participants are not required to contribute a percentage of their income to rent or utilities, so there are no standards developed.

Requirement: Standards for determining how long a particular program participant will be provided with rental assistance.

1) Short-term and medium-term rental assistance

Short and medium term rental assistance can be provided to a program participant with up to 24 months of rental assistance during any 3-year period. This assistance may be short-term rental assistance, medium-term rental assistance, payment of rental arrears, or any combination of this assistance.

- a) Short and Medium Term Rental Assistance - Short-term rental assistance is assistance for up to 3 months of rent; Medium-term rental assistance is assistance for more than 3 months but not more than 24 months of rent; Rental assistance for this program will be tenant-based.
 - i. Rental Assistance use with other subsidies. Except for a one-time payment of rental arrears on the tenant's portion of the rental payment, rental assistance cannot be provided to a program participant who is receiving tenant-based rental assistance, or

living in a housing unit receiving project-based rental assistance or operating assistance, through other public sources. Rental assistance may not be provided to a program participant who has been provided with replacement housing payments under the URA during the period of time covered by the URA payments.

- i. Fair Market Rent - Rental Assistance must only be provided if rent does not exceed Fair Market Rent and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.
 - ii. For purposes of calculating rent, the rent shall equal the sum of the total monthly rent for the unit, any fees required for occupancy under the lease (other than late fees and pet fees) and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.
 - iii. Rental assistance agreement. The recipient or subrecipient may make rental assistance payments only to an owner with whom the recipient or subrecipient has entered into a rental assistance agreement. The rental assistance agreement must set forth the terms under which rental assistance will be provided, including the requirements that apply under this section. The rental assistance agreement must provide that, during the term of the agreement, the owner must give the recipient or subrecipient a copy of any notice to the program participant to vacate the housing unit, or any complaint used under state or local law to commence an eviction action against the program participant.
 - iv. Late payments. The recipient or subrecipient must make timely payments to each owner in accordance with the rental assistance agreement. The rental assistance agreement must contain the same payment due date, grace period, and late payment penalty requirements as the program participant's lease. The recipient or subrecipient is solely responsible for paying late payment penalties that it incurs with non-ESG funds.
 - v. Lease. Each program participant receiving rental assistance must have a legally binding, written lease for the rental unit, unless the assistance is solely for rental arrears. The lease must be between the owner and the program participant. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance under paragraph (i) of this section, the lease must have an initial term of one year.
- b) Tenant-based rental assistance. Rental assistance for this program will be tenant-based, and all programs will provide the minimum amount of assistance needed for client to stabilize using the principles of Progressive Engagement.
- i. A program participant who receives tenant-based rental assistance may select a housing unit in which to live and may move to another unit or building and continue to receive rental assistance, as long as the program participant continues to meet the program requirements.
 - ii. The recipient may require that all program participants live within a particular area for the period in which the rental assistance is provided.
 - iii. The rental assistance agreement with the owner must terminate and no further rental assistance payments under that agreement may be made if:

- The program participant moves out of the housing unit for which the program participant has a lease;
 - The lease terminates and is not renewed; or
 - The program participant becomes ineligible to receive ESG rental assistance.
- c) Rental Arrears are paid if the client is assisted with one-time payment of up to 6 months of rental arrears, including any late fees on those arrears. A lease must be present in the file with the participant's name on the lease or a document of the rent payments/financial records, as well as Rent Reasonableness, Lead Based Paint and Habitability Standards forms. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance under paragraph (i) of this section, the lease must have an initial term of one year.
- d) Caps on assistance by program:
- i. Downtown Austin Community Court: Financial Assistance can include up to a year in direct financial assistance for all eligible financial assistance and rental assistance funding.
 - ii. Front Steps: None beyond the regulations above.
 - iii. Communicable Disease Unit: Does not administer financial assistance and rental assistance.
- e) All clients will be recertified at least every twelve months to determine ongoing eligibility as per 576.401. Recertification will assess clients to see if they do not have an annual income that exceeds 30% AMI, AND lack sufficient resources and support networks to retain housing without ESG assistance.

XI. Coordination Between Service Providers

The following list gives the types of service coordination activities to be undertaken for the ESG Program: Case management, permanent supportive housing, rapid re-housing and housing location and financial assistance.

Services will be coordinated between the downtown Austin Resource Center for the Homeless (ARCH), Downtown Austin Community Court, and in consultation with the local Continuum of Care as well as other service providers such as Austin Travis County Integral Care, Caritas of Austin, Salvation Army, Veterans Administration, Continuum of Care Permanent Supportive Housing programs and other appropriate federal, state and local service providers.

Agency	Case Management/ Supportive Services	Permanent Supportive Housing	Rapid Rehousing/ Housing Location	Direct Financial Assistance
Front Steps- PSH and Rapid Rehousing	X	X	X	X
Caritas of Austin	X	X	X	X

with CoC and City funding				
Downtown Austin Community Court	X		X	X
Communicable Disease Unit	X		X	
Other Continuum of Care programs	X	X		
City-funded Social Service Agencies	X	X	X	X

ESG Rapid Rehousing Program Design: All ESG Programs will have all components or coordinate with other funding sources or entities so that all needs of the Rapid Rehousing clients will be adequately addressed.

RR Agency	Case Management/ Supportive Services	Housing Location	Direct Financial Assistance	Rental Assistance
Front Steps	Front Steps	Front Steps	Front Steps HHSP and SSVF; BSS Plus	Front Steps HHSP and SSVF, BSS Plus
Communicable Disease Unit (CDU)	CDU	CDU/DACC ESG	DACC ESG	DACC ESG
Downtown Austin Community Court	DACC	DACC	DACC ESG	DACC ESG

XII. Homeless Management Information System (HMIS)

Organizations receiving funding from the City of Austin for homelessness prevention and homeless intervention services are required to utilize the Local Homeless Management Information System (HMIS) to track and report client information for individuals who are at risk of homelessness or who are homeless. A high level of data quality is required. All ESG-funded programs will also be working with the community's Coordinated Entry process.

ESG Specific Requirements Include:

- 1) Entering client data into HMIS as per the guidelines outlined in an agreement with ECHO HMIS and under the requirements of the Austin/Travis County HMIS Data Quality Assurance Plan.
- 2) ESG-funded programs will participate in the centralized or coordinated assessment system in HMIS, as required under § 576.400(d).
- 3) The ESG Rapid Rehousing program will accept referrals through Coordinated Entry.
- 4) Utilizing the ESG eligibility form to determine homeless eligibility.
- 5) Demographic data collected in the ESG Demographic Form
- 6) HUD 40118 form or other required form required for Emergency Solutions Grants

- 7) Submission of HUD reporting information for the Consolidated Plan, Action Plan and Consolidated Annual Performance and Evaluation Report (CAPER).
- 8) Participation in community homeless coordination and planning.
- 9) Other HMIS Requirements:
Organizations receiving funding from the City of Austin for homelessness prevention and homeless intervention services are required to utilize HMIS to track and report client information for individuals who are at risk of homelessness or who are homeless. A high level of data quality is required. The Ending Community Homelessness Coalition (ECHO) currently serves as the local HMIS administrator.

Section 2: ESG POLICIES AND PROCEDURES

Management and operation of approved projects is the responsibility of the Subrecipient. The Subrecipient is the entity that will receive the City contract. Therefore, the subrecipient has the overall responsibility of the project's successful completion.

I. Grant Subaward Process

At its discretion, the City may use a competitive Request for Application and comprehensive review process to award ESG funding to providers of services to homeless persons and persons at-risk of homelessness. Activities will be consistent with the City's Consolidated Plan, in compliance with local, state, and Federal requirements and the governing regulations for use of ESG funds, and in conformance with program standards. The City will enter into written agreements with selected Subrecipients and will work with Subrecipients to ensure that project costs are reasonable, appropriate, and necessary to accomplish the goals and objectives of the City's overall ESG Program. The subrecipient must be able to clearly demonstrate the benefits to be derived by the services provided to homeless individuals, and to low-to-moderate income families. Performance measures will be established in the contract. All ESG award decisions of the City are final.

II. Contracting

Subrecipients must enter into a written contract with the City for performance of the project activities. Once a contract is signed, the subrecipient will be held to all agreements therein.

- 1) Members of the Subrecipient organization, volunteers, residents, or subcontractors hired by the organization may carry out activities. Subrecipients must enter into a written contract with the subcontractors carrying out all or any part of an ESG project. All subcontractors must comply with the City and Federal procurement and contracting requirements.
- 2) All contracts are severable and may be canceled by the City for convenience. Project funding is subject to the availability of ESG funds and, if applicable, City Council approval.
- 3) Amendments - Any amendments to a contract must be mutually agreed upon by the Subrecipient and the City, *in writing*. Amendment requests initiated by the Subrecipient must clearly state the effective date of the amendment, in writing. Austin Public Health (APH) staff will determine if an amendment request is allowable. APH reserves the right to initiate amendments to the contract.
- 4) Liability - Subrecipients shall forward Certificates of Insurance to the Austin Public Health Department within 30 calendar days after notification of the award, unless otherwise specified. The City's Risk Management Department will review and approve the liability insurance requirements for each contract. Subrecipients must maintain current insurance coverage throughout the entire contract period, as well as for any subsequent amendments or contract extensions.

III. Internal Controls

Subrecipients must have policies and procedures in place to protect assets, create accurate and reliable financial reporting, maintain compliance with all applicable laws and regulations, and ensure that agency operations are effective and efficient. These Internal Controls should include, but are not limited to:

- 1) Information and documents required through the standard City Boilerplate
 - a. Business continuity/risk management plans

- b. Conflict of interest policy
- c. Whistleblower policy
- d. Financial management policy
- 2) Staff and Program evaluations
- 3) Maintaining annual income and expense budget reports to compare expected spending and revenue with actual spending and revenue
- 4) Information Technology controls
- 5) Written job descriptions to clearly define roles within the organization

IV. Recordkeeping Requirements

- 1) Project Records- The Subrecipient must manage their contract and maintain records in accordance with City and Federal policies and must be in accordance with sound business and financial management practices, which will be determined by the City. Record retention for all ESG records, including client information, is five years after the expenditure of contract funds.
- 2) Client Records- The Subrecipient must maintain the following types of client records to show evidence of services provided under the ESG program:
 - a) Client Eligibility records, including documentation of Homelessness, or At-Risk of Homelessness plus income eligibility and support documentation.
 - b) For Rapid Rehousing client files, a copy of the ESG Rapid Rehousing Client File Review checklist and Rapid Rehousing Financial Assistance Checklist should be placed at the beginning of the file and peer reviewed before any financial assistance is provided
 - c) Documentation of Continuum of Care centralized or coordinated assessment (for client intake)
 - d) Financial Assistance backup documentation required for each type of assistance outlined in the previous sections. Rental assistance agreements and payments, including security deposits, and all backup documentation required for each type of assistance outlined in the following sections.
- 3) Housing Financial Assistance
 For eligible clients, financial assistance may be allocated for eligible expenses with the following requirements and limitations:
 - a) Rental application fees.
 - b) Security deposits. Equal to no more than 2 months' rent.
 - c) Last month's rent. If necessary to obtain housing for a program participant, the last month's rent may be paid from ESG funds to the owner of that housing at the time the owner is paid the security deposit and the first month's rent. This assistance must not exceed one month's rent and must be included in calculating the program participant's total rental assistance, which cannot exceed 24 months during any 3-year period.
 - d) Utility deposits.
 - e) Utility payments. Up to 24 months of utility payments per program participant, per service, including up to 6 months of utility payments in arrears, per service. A partial payment of a utility bill counts as one month. This assistance may only be provided if the program participant or a member of the same household has an account in his or her name with a utility company or proof of responsibility to make utility payments. Eligible utility services are gas, electric, water, and sewage. No program participant shall receive more than 24 months of utility assistance within any 3-year period.
 - f) Financial assistance cannot be provided to a program participant who is receiving the same type of assistance through other public sources.

- g) Short-Term and Medium-Term Rental Assistance. Up to 24 months of rental assistance during any 3-year period. This assistance may be short-term rental assistance, medium-term rental assistance, payment of rental arrears, or any combination of this assistance.
 - i. Short-term rental assistance is assistance for up to 3 months of rent.
 - ii. Medium-term rental assistance is assistance for more than 3 months but not more than 24 months of rent.
 - iii. Payment of rental arrears consists of a one-time payment for up to 6 months of rent in arrears, including any late fees on those arrears.
 - iv. Rental assistance may be tenant-based or project-based
- h) Rent Restrictions.
 - i. Rental assistance cannot be provided unless the rent does not exceed the Fair Market Rent (FMR) established by HUD, as provided under 24 CFR part 888, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.
 - ii. For purposes of calculating rent under this section, the rent shall equal the sum of the total monthly rent for the unit, any fees required for occupancy under the lease (other than late fees and pet fees) and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.
 - iii. Rental assistance agreement must state that rental assistance payments will be made only to a landlord or owner with whom the subrecipient has entered into a rental assistance agreement. The rental assistance agreement must set forth the terms under which rental assistance will be provided, including the requirements that apply under this section. The rental assistance agreement must provide that, during the term of the agreement, the landlord/owner must give Front Steps a copy of any notice to the program participant to vacate the housing unit, or any complaint used under state or local law to commence an eviction action against the program participant.
 - iv. Late payments. Subrecipients must make timely payments to each landlord/owner in accordance with the rental assistance agreement. The rental assistance agreement must contain the same payment due date, grace period, and late payment penalty requirements as the program participant's lease. The recipient or sub-recipient is solely responsible for paying late payment penalties that it incurs with non-ESG funds.
 - v. Lease. Each program participant receiving rental assistance must have a legally binding, written lease for the rental unit, unless the assistance is solely for rental arrears. The lease must be between the landlord/owner and the program participant. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance, the lease must have an initial term of one year.
- i) All City of Austin ESG-funded Rapid Re-Housing programs will include the following components:
 - i. • Housing Stability Plan with Exit Strategy
 - ii. Progressive Engagement

- iii. Coordination with other HUD-funded programs and regular review the program's progress towards the HUD benchmarks;
- iv. Reducing the length of time program participants spend homeless;
- v. Exiting households to permanent housing, and
- vi. Limiting returns to homelessness within a year of program exit.

j) All of the below items must be completed *before* financial assistance can be provided:

Forms Required
<i>Required for housing location, housing stability case management, financial assistance, rental assistance</i>
Habitability Standards
Lead Hazard Standards
Rent-Reasonableness
Peer Reviewed ESG Rapid Rehousing Client File Review
<i>Required for rental assistance – arrears and ongoing rent (in addition to the above forms)</i>
Lease in client's name or a document of the rent payments/financial records
Fair market rent calculation
Landlord Rental Agreement

V. Reporting Requirements

1) Monthly Claims Requests

Claims Requests must be submitted within fifteen (15) calendar days after the reporting month's end with backup uploaded to the City's online contract management system, which identify the allowable expenditures incurred under this contract. The backup should be uploaded with the Claims request and should include:

- a) Front Steps: General Ledger
- b) City Agreements: Grant Cost Report grant costs with appropriate backup from the Digital Express Reports (DXR)
- c) Rapid Rehousing Financial Assistance programs: backup documentation for all direct financial assistance including a Rapid Rehousing Financial Assistance Checklist to verify that all required forms and steps were completed before releasing financial assistance to clients.
- d) Current Month Matching Funds Statement must be submitted monthly in the City's online contract management system, along with the monthly Claims report. The contractor is required to expend and document Matching Funds against payments to be received under this Agreement. The Claim cannot be approved unless the Matching Funds statement is included.

- e) All monthly claims reports must include a copy of the HMIS Universal Data Elements quality report for the month requested with ratings of either “Excellent” or “Acceptable” – if data quality reports fall below minimum standards, payments may be withheld until reports improve to “Excellent” or “Acceptable” ratings

2) Quarterly Reporting

- a) Quarterly performance reports shall be submitted, in a format prescribed by the City, by the 15th calendar day of the month after the quarter end, which identify the activities accomplished under this contract.
- b) Other performance metrics may be required to align with HUD system-wide performance measures.
- c) ESG Demographic Report must be submitted within fifteen (15) calendar days after the end of the preceding quarter. The data from this report should be able to be extracted from HMIS. Sections 4-8 and 10 must be completed by all ESG programs that serve clients.
- d) Quarterly Claims Review – Quarterly, one Claim will be reviewed for complete documentation including but not limited to:
 - i. Timesheets
 - ii. Check stubs, copies of checks
 - iii. Client File Checklists
 - iv. Peer Reviewed Rapid Rehousing Client File Review Form showing that the required documentation for clients served were collected in the correct order
 - v. Client file documentation of eligibility and appropriate housing documentation
 - vi. If issues are found with the quarterly reviews, or if HUD deems it necessary, the Claims Review process will be conducted monthly rather than quarterly

3) Annual Close-Out Reporting

- a) The Federal ESG program year ends on September 30th. At completion of all activities, a Contract Closeout Report must be submitted within 30 days of the end of the contract. The subrecipient is required to supply such information, in such form and format as the City and HUD may require. All records and reports must be made available to any authorized City representative upon request and without prior notice.
- b) For contracts that contain renewal/extension options, an Annual Progress Report shall be completed using the City’s online contract management system by the Grantee and submitted to the City within 60 calendar days following the end of each Program Period identified in the Agreement Exhibits.
- c) For contracts that contain renewal/extension options, an Annual Progress Report shall be completed using the City’s online contract management system by the Grantee and submitted to the City within 60 calendar days following the end of each Program Period identified in Section 4.1.2 of the Contract boilerplate.
- d) For those Agreements that are ending, a Closeout Report shall be completed by the Grantee through the City’s online contract management system and submitted to the City within 30 calendar days following the expiration or termination of this Agreement. Any encumbrances of funds incurred prior to the date of termination of this Agreement shall be subject to verification by the City. Upon termination of this Agreement, any unused funds, unobligated funds, rebates, credits, or interest earned on funds received under this Agreement shall be returned to the City.

- e) The Closeout Report must contain all information that the City requires during the normal Contract Close-Out Report or, if the Contract is ongoing but the Program Period had ended, all of the information the City requires for their Contract Progress Report.
- f) All ESG Subrecipients must use HMIS to report on clients served by the ESG program.
- g) All ESG programs are required to submit end of year reporting according to HUD requirements. This may include:
 - i. providing reports in the contract database earlier than the normal fourth quarter deadline
 - ii. Running and submitting an HMIS report to the HUD database, SAGE.

VI. Program Limitations

- 1) ESG Administration costs are limited to 7.5% of the total ESG allocation.
- 2) ESG Street Outreach and Emergency Shelter costs are limited to the greater of: 60% of the City's 2011-12 ESG grant -or- the amount committed to emergency shelter for the City's 2010-11 ESG allocation.
- 3) Program Income - Income derived from any ESG activity must be recorded and reported to APH as program income. Such income may not be retained or disbursed by the subrecipient without written approval from APH and is subject to the same controls and conditions as the Subrecipient's grant allocation.
- 4) ESG funds may not be used for lobbying or for any activities designed to influence legislation at any government level.
- 5) A church or religious affiliated organization must show secularism when submitting an ESG application.
- 6) Any ESG funds that are unallocated after the funding cycle will be reprogrammed by APH. Contracts that show three (3) consecutive months of inactivity (as documented by monthly reports or non-submission of required reports) will be reviewed on a case-by-case basis, and may be irrevocably canceled.

VII. Performance Standards

ESG-funded programs will report into HMIS and have a high level of data quality specified in Section A. XII. Homeless Management Information Systems. HMIS data quality is reviewed quarterly by City staff. All data quality is reviewed by the ECHO HMIS Administrator.

Performance measures will be reviewed quarterly by Austin Public Health Department. Measures will also be reviewed annually by the local Continuum of Care decision-making body, ECHO, during the annual Consolidated Evaluation and Performance Report process.

VIII. Termination Procedures

The following is provided in the case that a client is terminated:

- 1) Written notice to the participant containing a clear statement of the reason for termination.
- 2) A review of the decision, in which the participant is given the opportunity to present written or oral objections before a person other than the person(or subordinate of the person) who made or approved the termination decisions, AND
- 3) Prompt written notification to the program participant.

IX. Accessibility

In order to demonstrate compliance with the Americans with Disabilities Act (ADA) and Section 504 requirements, the following statements must be added to all public notices, advertisements, program applications, program guidelines, program information brochures or packages, and any other material containing general information that is made available to participants, beneficiaries, applicants, or employees:

_____ (*insert the name of your organization*) as a subrecipient of the City of Austin is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please call _____ (*insert your organization's phone number*) (voice) or Relay Texas at 1-800-735-2989 (TDD) for assistance.

_____ (*insert the name of your organization*) como un subreceptor de la Ciudad de Austin se compromete a cumplir con el Decreto de los Americanos Incapacitados. Con solo solicitarlo se proveerán modificaciones e igual acceso a comunicaciones. Para información favor de llamar a _____ (*insert your organization's phone number*) (voz) o Relay Texas 1-800-735-2989 (TDD) para asistencia.

Title 24: Housing and Urban Development

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

Section Contents

Subpart A—General Provisions

- § 576.1 Applicability and purpose.
- § 576.2 Definitions.
- § 576.3 Allocation of funding.

Subpart B—Program Components and Eligible Activities

- § 576.100 General provisions and expenditure limits.
- § 576.101 Street outreach component.
- § 576.102 Emergency shelter component.
- § 576.103 Homelessness prevention component.
- § 576.104 Rapid re-housing assistance component.
- § 576.105 Housing relocation and stabilization services.
- § 576.106 Short-term and medium-term rental assistance.
- § 576.107 HMIS component.
- § 576.108 Administrative activities.
- § 576.109 Indirect costs.

Subpart C—Award and Use of Funds

- § 576.200 Submission requirements and grant approval.
- § 576.201 Matching requirement.
- § 576.202 Means of carrying out grant activities.
- § 576.203 Obligation, expenditure, and payment requirements.

Subpart D—Reallocations

- § 576.300 In general.
- § 576.301 Metropolitan cities and urban counties.
- § 576.302 States.
- § 576.303 Territories.

Subpart E—Program Requirements

- § 576.400 Area-wide systems coordination requirements.
- § 576.401 Evaluation of program participant eligibility and needs.
- § 576.402 Terminating assistance.
- § 576.403 Shelter and housing standards.
- § 576.404 Conflicts of interest.
- § 576.405 Homeless participation.
- § 576.406 Faith-based activities.
- § 576.407 Other Federal requirements.
- § 576.408 Displacement, relocation, and acquisition.

Subpart F—Grant Administration

- § 576.500 Recordkeeping and reporting requirements.
- § 576.501 Enforcement.

Authority: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 576.1 Applicability and purpose.

This part implements the Emergency Solutions Grants (ESG) program authorized by subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371–11378). The program authorizes the Department of Housing and Urban Development (HUD) to make grants to States, units of general purpose local government, and territories for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain expenses related to operating emergency shelters, for essential services related to emergency shelters and street outreach for the homeless, and for homelessness prevention and rapid re-housing assistance.

§ 576.2 Definitions.

At risk of homelessness means:

(1) An individual or family who:

(i) Has an annual income below 30 percent of median family income for the area, as determined by HUD;

(ii) Does not have sufficient resources or support networks, *e.g.*, family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the “homeless” definition in this section; and

(iii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by Federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than 1.5 persons reside per room, as defined by the U.S. Census Bureau;

(F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan;

(2) A child or youth who does not qualify as “homeless” under this section, but qualifies as “homeless” under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as “homeless” under this section, but qualifies as “homeless” under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

Consolidated plan means a plan prepared in accordance with 24 CFR part 91. An *approved consolidated plan* means a consolidated plan that has been approved by HUD in accordance with 24 CFR part 91.

Continuum of Care means the group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers; victim service providers; faith-based organizations; governments; businesses; advocates; public housing agencies; school districts; social service providers; mental health agencies; hospitals; universities; affordable housing developers; law enforcement; organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area.

Emergency shelter means any facility, the primary purpose of which is to provide a temporary shelter for the homeless in general or for specific populations of the homeless and which does not require occupants to sign leases or occupancy agreements. Any project funded as an emergency shelter under a Fiscal Year 2010 Emergency Solutions grant may continue to be funded under ESG.

Homeless means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

- (i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
- (ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or
- (iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

- (i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
- (ii) No subsequent residence has been identified; and
- (iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

- (i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);
- (ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;
- (iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and
- (iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

- (i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;
- (ii) Has no other residence; and
- (iii) Lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, to obtain other permanent housing.

Homeless Management Information System (HMIS) means the information system designated by the Continuum of Care to comply with the HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at-risk of homelessness.

Metropolitan city means a city that was classified as a metropolitan city under 42 U.S.C. 5302(a) for the fiscal year immediately preceding the fiscal year for which ESG funds are made available. This term includes the District of Columbia.

Private nonprofit organization means a private nonprofit organization that is a secular or religious organization described in section 501(c) of the Internal Revenue Code of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. A private nonprofit organization does not include a governmental organization, such as a public housing agency or housing finance agency.

Program income shall have the meaning provided in 24 CFR 85.25. Program income includes any amount of a security or utility deposit returned to the recipient or subrecipient.

Program participant means an individual or family who is assisted under ESG program.

Program year means the consolidated program year established by the recipient under 24 CFR part 91.

Recipient means any State, territory, metropolitan city, or urban county, or in the case of reallocation, any unit of general purpose local government that is approved by HUD to assume financial responsibility and enters into a grant agreement with HUD to administer assistance under this part.

State means each of the several States and the Commonwealth of Puerto Rico.

Subrecipient means a unit of general purpose local government or private nonprofit organization to which a recipient makes available ESG funds.

Territory means each of the following: the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

Unit of general purpose local government means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

Urban county means a county that was classified as an urban county under 42 U.S.C. 5302(a) for the fiscal year immediately preceding the fiscal year for which ESG funds are made available.

Victim service provider means a private nonprofit organization whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. This term includes rape crisis centers, battered women's shelters, domestic violence transitional housing programs, and other programs.

§ 576.3 Allocation of funding.

(a) *Territories*. HUD will set aside for allocation to the territories up to 0.2 percent, but not less than 0.1 percent, of the total amount of each appropriation under this part in any fiscal year. HUD will allocate this set-aside amount to each territory based on its proportionate share of the total population of all territories and its rate of compliance with the most recent expenditure deadline under §576.203.

(b) *States, metropolitan cities, and urban counties*. HUD will allocate the amounts that remain after the set-aside to territories under paragraph (a) of this section to States, metropolitan cities, and urban counties, as follows:

(1) HUD will provide that the percentage of the total amount available for allocation to each State, metropolitan city, or urban county is equal to the percentage of the total amount available under section 106 of the Housing and Community Development Act of 1974 for the prior fiscal year that was allocated to that State, metropolitan city, or urban county.

(2) Except as otherwise provided by law, if the amount a metropolitan city or urban county would be allocated under paragraph (b)(1) is less than 0.05 percent of the total fiscal year appropriation for ESG, that amount will be added to the allocation for the State in which the city or county is located.

(c) *Notification of allocation amount*. HUD will notify each State, metropolitan city, urban county, and territory that is eligible to receive an allocation under this section of the amount of its allocation.

Subpart B—Program Components and Eligible Activities

§ 576.100 General provisions and expenditure limits.

(a) ESG funds may be used for five program components: street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, and HMIS; as well as administrative activities. The five program components and the eligible activities that may be funded under each are set forth in §576.101 through §576.107. Eligible administrative activities are set forth in §576.108.

(b) The total amount of the recipient's fiscal year grant that may be used for street outreach and emergency shelter activities cannot exceed the greater of:

- (1) 60 percent of the recipient's fiscal year grant; or
- (2) The amount of Fiscal Year 2010 grant funds committed for homeless assistance activities.

(c) The total amount of ESG funds that may be used for administrative activities cannot exceed 7.5 percent of the recipient's fiscal year grant.

(d) Subject to the cost principles in OMB Circulars A-87 (2 CFR 225) and A-122 (2 CFR 230) and other requirements in this part, employee compensation and other overhead costs directly related to carrying out street outreach, emergency shelter, homelessness prevention, rapid re-housing, and HMIS are eligible costs of those program components. These costs are not subject to the expenditure limit in paragraph (c) of this section.

§ 576.101 Street outreach component.

(a) *Eligible costs*. Subject to the expenditure limit in §576.100(b), ESG funds may be used for costs of providing essential services necessary to reach out to unsheltered homeless people; connect them with emergency shelter, housing, or critical services; and provide urgent, nonfacility-based care to unsheltered homeless people who are unwilling or unable to access emergency shelter, housing, or an appropriate health facility. For the purposes of this section, the term "unsheltered homeless people" means individuals and families who qualify as homeless under paragraph (1)(i) of the "homeless" definition under §576.2. The eligible costs and requirements for essential services consist of:

- (1) *Engagement*. The costs of activities to locate, identify, and build relationships with unsheltered homeless people and engage them for the purpose of providing immediate support, intervention, and connections with homeless assistance programs and/or mainstream social services and housing programs. These activities consist of making an initial assessment of needs and eligibility; providing crisis counseling; addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries; and actively connecting and providing information and referrals to programs targeted to

homeless people and mainstream social services and housing programs, including emergency shelter, transitional housing, community-based services, permanent supportive housing, and rapid re-housing programs. Eligible costs include the cell phone costs of outreach workers during the performance of these activities.

(2) *Case management.* The cost of assessing housing and service needs, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant. Eligible services and activities are as follows: using the centralized or coordinated assessment system as required under §576.400(d); conducting the initial evaluation required under §576.401(a), including verifying and documenting eligibility; counseling; developing, securing and coordinating services; obtaining Federal, State, and local benefits; monitoring and evaluating program participant progress; providing information and referrals to other providers; and developing an individualized housing and service plan, including planning a path to permanent housing stability.

(3) *Emergency health services.*

(i) Eligible costs are for the direct outpatient treatment of medical conditions and are provided by licensed medical professionals operating in community-based settings, including streets, parks, and other places where unsheltered homeless people are living.

(ii) ESG funds may be used only for these services to the extent that other appropriate health services are inaccessible or unavailable within the area.

(iii) Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate emergency medical treatment; and providing medication and follow-up services.

(4) *Emergency mental health services.* (i) Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions operating in community-based settings, including streets, parks, and other places where unsheltered people are living.

(ii) ESG funds may be used only for these services to the extent that other appropriate mental health services are inaccessible or unavailable within the community.

(iii) Mental health services are the application of therapeutic processes to personal, family, situational, or occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances.

(iv) Eligible treatment consists of crisis interventions, the prescription of psychotropic medications, explanation about the use and management of medications, and combinations of therapeutic approaches to address multiple problems.

(5) *Transportation.* The transportation costs of travel by outreach workers, social workers, medical professionals, or other service providers are eligible, provided that this travel takes place during the provision of services eligible under this section. The costs of transporting unsheltered people to emergency shelters or other service facilities are also eligible. These costs include the following:

(i) The cost of a program participant's travel on public transportation;

(ii) If service workers use their own vehicles, mileage allowance for service workers to visit program participants;

(iii) The cost of purchasing or leasing a vehicle for the recipient or subrecipient in which staff transports program participants and/or staff serving program participants, and the cost of gas, insurance, taxes and maintenance for the vehicle; and

(iv) The travel costs of recipient or subrecipient staff to accompany or assist program participants to use public transportation.

(6) *Services for special populations.* ESG funds may be used to provide services for homeless youth, victim services, and services for people living with HIV/AIDS, so long as the costs of providing these services are eligible under paragraphs (a)(1) through (a)(5) of this section. The term *victim services* means services that assist program participants who are victims of domestic violence, dating violence, sexual assault, or stalking, including services offered by rape crisis centers and domestic violence shelters, and other organizations with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(b) *Minimum period of use.* The recipient or subrecipient must provide services to homeless individuals and families for at least the period during which ESG funds are provided.

(c) *Maintenance of effort.*

(1) If the recipient or subrecipient is a unit of general purpose local government, its ESG funds cannot be used to replace funds the local government provided for street outreach and emergency shelter services during the immediately preceding 12-month period, unless HUD determines that the unit of general purpose local government is in a severe financial deficit.

(2) Upon the recipient's request, HUD will determine whether the unit of general purpose local government is in a severe financial deficit, based on the recipient's demonstration of each of the following:

(i) The average poverty rate in the unit of general purpose local government's jurisdiction was equal to or greater than 125 percent of the average national poverty rate, during the calendar year for which the most recent data are available, as determined according to information from the U.S. Census Bureau.

(ii) The average per-capita income in the unit of general purpose local government's jurisdiction was less than 75 percent of the average national per-capita income, during the calendar year for which the most recent data are available, as determined according to information from the Census Bureau.

(iii) The unit of general purpose local government has a current annual budget deficit that requires a reduction in funding for services for homeless people.

(iv) The unit of general purpose local government has taken all reasonable steps to prevent a reduction in funding of services for homeless people. Reasonable steps may include steps to increase revenue generation, steps to maximize cost savings, or steps to reduce expenditures in areas other than services for homeless people.

§ 576.102 Emergency shelter component.

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(a) *General.* Subject to the expenditure limit in §576.100(b), ESG funds may be used for costs of providing essential services to homeless families and individuals in emergency shelters, renovating buildings to be used as emergency shelter for homeless families and individuals, and operating emergency shelters.

(1) *Essential services.* ESG funds may be used to provide essential services to individuals and families who are in an emergency shelter, as follows:

(i) *Case management.* The cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant is eligible. Component services and activities consist of:

(A) Using the centralized or coordinated assessment system as required under §576.400(d);

(B) Conducting the initial evaluation required under §576.401(a), including verifying and documenting eligibility;

(C) Counseling;

(D) Developing, securing, and coordinating services and obtaining Federal, State, and local benefits;

(E) Monitoring and evaluating program participant progress;

(F) Providing information and referrals to other providers;

(G) Providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault, and stalking; and

(H) Developing an individualized housing and service plan, including planning a path to permanent housing stability.

(ii) *Child care.* The costs of child care for program participants, including providing meals and snacks, and comprehensive and coordinated sets of appropriate developmental activities, are eligible. The children must be under the age of 13, unless they are disabled. Disabled children must be under the age of 18. The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

(iii) *Education services.* When necessary for the program participant to obtain and maintain housing, the costs of improving knowledge and basic educational skills are eligible. Services include instruction or training in consumer education, health education, substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED). Component services or activities are screening, assessment and testing; individual or group instruction; tutoring; provision of books, supplies and instructional material; counseling; and referral to community resources.

(iv) *Employment assistance and job training.* The costs of employment assistance and job training programs are eligible, including classroom, online, and/or computer instruction; on-the-job instruction; and services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of providing reasonable stipends to program participants in employment assistance and job training programs is an eligible cost. Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates. Services that assist individuals in securing employment consist of employment screening, assessment, or testing; structured job skills and job-seeking skills; special training and tutoring, including literacy training and prevocational training; books and instructional material; counseling or job coaching; and referral to community resources.

(v) *Outpatient health services.* Eligible costs are for the direct outpatient treatment of medical conditions and are provided by licensed medical professionals. Emergency Solutions Grant (ESG) funds may be used only for these services to the extent that other appropriate health services are unavailable within the community. Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate medical treatment, preventive medical care, and health maintenance services, including emergency medical services; providing medication and follow-up services; and providing preventive and noncosmetic dental care.

(vi) *Legal services.*

(A) Eligible costs are the hourly fees for legal advice and representation by attorneys licensed and in good standing with the bar association of the State in which the services are provided, and by person(s) under the supervision of the licensed attorney, regarding matters that interfere with the program participant's ability to obtain and retain housing.

(B) Emergency Solutions Grant (ESG) funds may be used only for these services to the extent that other appropriate legal services are unavailable or inaccessible within the community.

(C) Eligible subject matters are child support, guardianship, paternity, emancipation, and legal separation, orders of protection and other civil remedies for victims of domestic violence, dating violence, sexual assault, and stalking, appeal of veterans and public benefit claim denials, and the resolution of outstanding criminal warrants.

(D) Component services or activities may include client intake, preparation of cases for trial, provision of legal advice, representation at hearings, and counseling.

(E) Fees based on the actual service performed (i.e., fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a legal services provider and performs the services itself, the eligible costs are the subrecipient's employees' salaries and other costs necessary to perform the services.

(F) Legal services for immigration and citizenship matters and issues relating to mortgages are ineligible costs. Retainer fee arrangements and contingency fee arrangements are ineligible costs.

(vii) *Life skills training.* The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, substance use, and homelessness are eligible costs. These services must be necessary to assist the program participant to function independently in the community. Component life skills training are budgeting resources, managing money, managing a household, resolving conflict, shopping for food and needed items, improving nutrition, using public transportation, and parenting.

(viii) *Mental health services.*

(A) Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions.

(B) ESG funds may only be used for these services to the extent that other appropriate mental health services are unavailable or inaccessible within the community.

(C) Mental health services are the application of therapeutic processes to personal, family, situational, or occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances. Problem areas may include family and marital relationships, parent-child problems, or symptom management.

(D) Eligible treatment consists of crisis interventions; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.

(ix) *Substance abuse treatment services.*

(A) Eligible substance abuse treatment services are designed to prevent, reduce, eliminate, or deter relapse of substance abuse or addictive behaviors and are provided by licensed or certified professionals.

(B) ESG funds may only be used for these services to the extent that other appropriate substance abuse treatment services are unavailable or inaccessible within the community.

(C) Eligible treatment consists of client intake and assessment, and outpatient treatment for up to 30 days. Group and individual counseling and drug testing are eligible costs. Inpatient detoxification and other inpatient drug or alcohol treatment are not eligible costs.

(x) *Transportation.* Eligible costs consist of the transportation costs of a program participant's travel to and from medical care, employment, child care, or other eligible essential services facilities. These costs include the following:

(A) The cost of a program participant's travel on public transportation;

(B) If service workers use their own vehicles, mileage allowance for service workers to visit program participants;

(C) The cost of purchasing or leasing a vehicle for the recipient or subrecipient in which staff transports program participants and/or staff serving program participants, and the cost of gas, insurance, taxes, and maintenance for the vehicle; and

(D) The travel costs of recipient or subrecipient staff to accompany or assist program participants to use public transportation.

(xi) *Services for special populations.* ESG funds may be used to provide services for homeless youth, victim services, and services for people living with HIV/AIDS, so long as the costs of providing these services are eligible under paragraphs (a)(1)(i) through (a)(1)(x) of this section. The term *victim services* means services that assist program participants who are victims of domestic violence, dating violence, sexual assault, or stalking, including services offered by rape crisis centers and domestic violence shelters, and other organizations with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(2) *Renovation.* Eligible costs include labor, materials, tools, and other costs for renovation (including major rehabilitation of an emergency shelter or conversion of a building into an emergency shelter). The emergency shelter must be owned by a government entity or private nonprofit organization.

(3) *Shelter operations.* Eligible costs are the costs of maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, and supplies necessary for the operation of the emergency shelter. Where no appropriate emergency shelter is available for a homeless family or individual, eligible costs may also include a hotel or motel voucher for that family or individual.

(4) *Assistance required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).* Eligible costs are the costs of providing URA assistance under §576.408, including relocation payments and other assistance to persons displaced by a project assisted with ESG funds. Persons that receive URA assistance are not considered "program participants" for the purposes of this part, and relocation payments and other URA assistance are not considered "rental assistance" or "housing relocation and stabilization services" for the purposes of this part.

(b) *Prohibition against involuntary family separation.* The age, of a child under age 18 must not be used as a basis for denying any family's admission to an emergency shelter that uses Emergency Solutions Grant (ESG) funding or services and provides shelter to families with children under age 18.

(c) *Minimum period of use.*

(1) *Renovated buildings.* Each building renovated with ESG funds must be maintained as a shelter for homeless individuals and families for not less than a period of 3 or 10 years, depending on the type of renovation and the value of the building. The "value of the building" is the reasonable monetary value assigned to the building, such as the value assigned by an independent real estate appraiser. The minimum use period must begin on the date the building is first occupied by a homeless individual or family after the completed renovation. A minimum period of use of 10 years, required for major rehabilitation and conversion, must be enforced by a recorded deed or use restriction.

(i) *Major rehabilitation.* If the rehabilitation cost of an emergency shelter exceeds 75 percent of the value of the building before rehabilitation, the minimum period of use is 10 years.

(ii) *Conversion.* If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the minimum period of use is 10 years.

(iii) *Renovation other than major rehabilitation or conversion.* In all other cases where ESG funds are used for renovation, the minimum period of use is 3 years.

(2) *Essential services and shelter operations.* Where the recipient or subrecipient uses ESG funds solely for essential services or shelter operations, the recipient or subrecipient must provide services or shelter to homeless individuals and families at least for the period during which the ESG funds are provided. The recipient or subrecipient does not need to limit these services or shelter to a particular site or structure, so long as the site or structure serves the same type of persons originally served with the assistance (e.g., families with children, unaccompanied youth, disabled individuals, or victims of domestic violence) or serves homeless persons in the same area where the recipient or subrecipient originally provided the services or shelter.

(d) *Maintenance of effort.* The maintenance of effort requirements under §576.101(c), which apply to the use of ESG funds for essential services related to street outreach, also apply for the use of such funds for essential services related to emergency shelter.

§ 576.103 Homelessness prevention component.

ESG funds may be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance necessary to prevent an individual or family from moving into an emergency shelter or another place described in paragraph (1) of the "homeless" definition in §576.2. This assistance, referred to as homelessness prevention, may be provided to individuals and families who meet the criteria under the "at risk of homelessness" definition, or who meet the criteria in paragraph (2), (3), or (4) of the "homeless" definition in §576.2 and have an annual income below 30 percent of median family income for the area, as determined by HUD. The costs of homelessness prevention are only eligible to the extent that the assistance is necessary to

help the program participant regain stability in the program participant's current permanent housing or move into other permanent housing and achieve stability in that housing. Homelessness prevention must be provided in accordance with the housing relocation and stabilization services requirements in §576.105, the short-term and medium-term rental assistance requirements in §576.106, and the written standards and procedures established under §576.400.

§ 576.104 Rapid re-housing assistance component.

ESG funds may be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing. This assistance, referred to as rapid re-housing assistance, may be provided to program participants who meet the criteria under paragraph (1) of the "homeless" definition in §576.2 or who meet the criteria under paragraph (4) of the "homeless" definition and live in an emergency shelter or other place described in paragraph (1) of the "homeless" definition. The rapid re-housing assistance must be provided in accordance with the housing relocation and stabilization services requirements in §576.105, the short- and medium-term rental assistance requirements in §576.106, and the written standards and procedures established under §576.400.

§ 576.105 Housing relocation and stabilization services.

(a) *Financial assistance costs.* Subject to the general conditions under §576.103 and §576.104, ESG funds may be used to pay housing owners, utility companies, and other third parties for the following costs:

- (1) *Rental application fees.* ESG funds may pay for the rental housing application fee that is charged by the owner to all applicants.
- (2) *Security deposits.* ESG funds may pay for a security deposit that is equal to no more than 2 months' rent.
- (3) *Last month's rent.* If necessary to obtain housing for a program participant, the last month's rent may be paid from ESG funds to the owner of that housing at the time the owner is paid the security deposit and the first month's rent. This assistance must not exceed one month's rent and must be included in calculating the program participant's total rental assistance, which cannot exceed 24 months during any 3-year period.
- (4) *Utility deposits.* ESG funds may pay for a standard utility deposit required by the utility company for all customers for the utilities listed in paragraph (5) of this section.
- (5) *Utility payments.* ESG funds may pay for up to 24 months of utility payments per program participant, per service, including up to 6 months of utility payments in arrears, per service. A partial payment of a utility bill counts as one month. This assistance may only be provided if the program participant or a member of the same household has an account in his or her name with a utility company or proof of responsibility to make utility payments. Eligible utility services are gas, electric, water, and sewage. No program participant shall receive more than 24 months of utility assistance within any 3-year period.
- (6) *Moving costs.* ESG funds may pay for moving costs, such as truck rental or hiring a moving company. This assistance may include payment of temporary storage fees for up to 3 months, provided that the fees are accrued after the date the program participant begins receiving assistance under paragraph (b) of this section and before the program participant moves into permanent housing. Payment of temporary storage fees in arrears is not eligible.

(b) *Services costs.* Subject to the general restrictions under §576.103 and §576.104, ESG funds may be used to pay the costs of providing the following services:

- (1) *Housing search and placement.* Services or activities necessary to assist program participants in locating, obtaining, and retaining suitable permanent housing, include the following:
 - (i) Assessment of housing barriers, needs, and preferences;
 - (ii) Development of an action plan for locating housing;
 - (iii) Housing search;
 - (iv) Outreach to and negotiation with owners;
 - (v) Assistance with submitting rental applications and understanding leases;
 - (vi) Assessment of housing for compliance with Emergency Solutions Grant (ESG) requirements for habitability, lead-based paint, and rent reasonableness;

- (vii) Assistance with obtaining utilities and making moving arrangements; and
- (viii) Tenant counseling.

(2) *Housing stability case management.* ESG funds may be used to pay cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to facilitate housing stability for a program participant who resides in permanent housing or to assist a program participant in overcoming immediate barriers to obtaining housing. This assistance cannot exceed 30 days during the period the program participant is seeking permanent housing and cannot exceed 24 months during the period the program participant is living in permanent housing. Component services and activities consist of:

- (A) Using the centralized or coordinated assessment system as required under §576.400(d), to evaluate individuals and families applying for or receiving homelessness prevention or rapid re-housing assistance;
- (B) Conducting the initial evaluation required under §576.401(a), including verifying and documenting eligibility, for individuals and families applying for homelessness prevention or rapid re-housing assistance;
- (C) Counseling;
- (D) Developing, securing, and coordinating services and obtaining Federal, State, and local benefits;
- (E) Monitoring and evaluating program participant progress;
- (F) Providing information and referrals to other providers;
- (G) Developing an individualized housing and service plan, including planning a path to permanent housing stability; and
- (H) Conducting re-evaluations required under §576.401(b).

(3) *Mediation.* ESG funds may pay for mediation between the program participant and the owner or person(s) with whom the program participant is living, provided that the mediation is necessary to prevent the program participant from losing permanent housing in which the program participant currently resides.

(4) *Legal services.* ESG funds may pay for legal services, as set forth in §576.102(a)(1)(vi), except that the eligible subject matters also include landlord/tenant matters, and the services must be necessary to resolve a legal problem that prohibits the program participant from obtaining permanent housing or will likely result in the program participant losing the permanent housing in which the program participant currently resides.

(5) *Credit repair.* ESG funds may pay for credit counseling and other services necessary to assist program participants with critical skills related to household budgeting, managing money, accessing a free personal credit report, and resolving personal credit problems. This assistance does not include the payment or modification of a debt.

(c) *Maximum amounts and periods of assistance.* The recipient may set a maximum dollar amount that a program participant may receive for each type of financial assistance under paragraph (a) of this section. The recipient may also set a maximum period for which a program participant may receive any of the types of assistance or services under this section. However, except for housing stability case management, the total period for which any program participant may receive the services under paragraph (b) of this section must not exceed 24 months during any 3-year period. The limits on the assistance under this section apply to the total assistance an individual receives, either as an individual or as part of a family.

(d) *Use with other subsidies.* Financial assistance under paragraph (a) of this section cannot be provided to a program participant who is receiving the same type of assistance through other public sources or to a program participant who has been provided with replacement housing payments under the URA, during the period of time covered by the URA payments.

§ 576.106 Short-term and medium-term rental assistance.

(a) *General provisions.* Subject to the general conditions under §576.103 and §576.104, the recipient or subrecipient may provide a program participant with up to 24 months of rental assistance during any 3-year

period. This assistance may be short-term rental assistance, medium-term rental assistance, payment of rental arrears, or any combination of this assistance.

- (1) Short-term rental assistance is assistance for up to 3 months of rent.
- (2) Medium-term rental assistance is assistance for more than 3 months but not more than 24 months of rent.
- (3) Payment of rental arrears consists of a one-time payment for up to 6 months of rent in arrears, including any late fees on those arrears.
- (4) Rental assistance may be tenant-based or project-based, as set forth in paragraphs (h) and (i) of this section.

(b) *Discretion to set caps and conditions.* Subject to the requirements of this section, the recipient may set a maximum amount or percentage of rental assistance that a program participant may receive, a maximum number of months that a program participant may receive rental assistance, or a maximum number of times that a program participant may receive rental assistance. The recipient may also require program participants to share in the costs of rent.

(c) *Use with other subsidies.* Except for a one-time payment of rental arrears on the tenant's portion of the rental payment, rental assistance cannot be provided to a program participant who is receiving tenant-based rental assistance, or living in a housing unit receiving project-based rental assistance or operating assistance, through other public sources. Rental assistance may not be provided to a program participant who has been provided with replacement housing payments under the URA during the period of time covered by the URA payments.

(d) *Rent restrictions.*

- (1) Rental assistance cannot be provided unless the rent does not exceed the Fair Market Rent established by HUD, as provided under 24 CFR part 888, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.
- (2) For purposes of calculating rent under this section, the rent shall equal the sum of the total monthly rent for the unit, any fees required for occupancy under the lease (other than late fees and pet fees) and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.

(e) *Rental assistance agreement.* The recipient or subrecipient may make rental assistance payments only to an owner with whom the recipient or subrecipient has entered into a rental assistance agreement. The rental assistance agreement must set forth the terms under which rental assistance will be provided, including the requirements that apply under this section. The rental assistance agreement must provide that, during the term of the agreement, the owner must give the recipient or subrecipient a copy of any notice to the program participant to vacate the housing unit, or any complaint used under state or local law to commence an eviction action against the program participant.

(f) *Late payments.* The recipient or subrecipient must make timely payments to each owner in accordance with the rental assistance agreement. The rental assistance agreement must contain the same payment due date, grace period, and late payment penalty requirements as the program participant's lease. The recipient or subrecipient is solely responsible for paying late payment penalties that it incurs with non-ESG funds.

(g) *Lease.* Each program participant receiving rental assistance must have a legally binding, written lease for the rental unit, unless the assistance is solely for rental arrears. The lease must be between the owner and the program participant. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance under paragraph (i) of this section, the lease must have an initial term of one year.

(h) *Tenant-based rental assistance.*

- (1) A program participant who receives tenant-based rental assistance may select a housing unit in which to live and may move to another unit or building and continue to receive rental assistance, as long as the program participant continues to meet the program requirements.

(2) The recipient may require that all program participants live within a particular area for the period in which the rental assistance is provided.

(3) The rental assistance agreement with the owner must terminate and no further rental assistance payments under that agreement may be made if:

- (i) The program participant moves out of the housing unit for which the program participant has a lease;
- (ii) The lease terminates and is not renewed; or
- (iii) The program participant becomes ineligible to receive ESG rental assistance.

(i) *Project-based rental assistance.* If the recipient or subrecipient identifies a permanent housing unit that meets ESG requirements and becomes available before a program participant is identified to lease the unit, the recipient or subrecipient may enter into a rental assistance agreement with the owner to reserve the unit and subsidize its rent in accordance with the following requirements:

(1) The rental assistance agreement may cover one or more permanent housing units in the same building. Each unit covered by the rental assistance agreement ("assisted unit") may only be occupied by program participants, except as provided under paragraph (i)(4) of this section.

(2) The recipient or subrecipient may pay up to 100 percent of the first month's rent, provided that a program participant signs a lease and moves into the unit before the end of the month for which the first month's rent is paid. The rent paid before a program participant moves into the unit must not exceed the rent to be charged under the program participant's lease and must be included when determining that program participant's total rental assistance.

(3) The recipient or subrecipient may make monthly rental assistance payments only for each whole or partial month an assisted unit is leased to a program participant. When a program participant moves out of an assisted unit, the recipient or subrecipient may pay the next month's rent, *i.e.*, the first month's rent for a new program participant, as provided in paragraph (i)(2) of this section.

(4) The program participant's lease must not condition the term of occupancy to the provision of rental assistance payments. If the program participant is determined ineligible or reaches the maximum number of months over which rental assistance can be provided, the recipient or subrecipient must suspend or terminate the rental assistance payments for the unit. If the payments are suspended, the individual or family may remain in the assisted unit as permitted under the lease, and the recipient or subrecipient may resume payments if the individual or family again becomes eligible and needs further rental assistance. If the payments are terminated, the rental assistance may be transferred to another available unit in the same building, provided that the other unit meets all ESG requirements.

(5) The rental assistance agreement must have an initial term of one year. When a new program participant moves into an assisted unit, the term of the rental assistance agreement may be extended to cover the initial term of the program participant's lease. If the program participant's lease is renewed, the rental assistance agreement may be renewed or extended, as needed, up to the maximum number of months for which the program participant remains eligible. However, under no circumstances may the recipient or subrecipient commit ESG funds to be expended beyond the expenditure deadline in §576.203 or commit funds for a future ESG grant before the grant is awarded.

(j) *Changes in household composition.* The limits on the assistance under this section apply to the total assistance an individual receives, either as an individual or as part of a family.

§ 576.107 HMIS component.

(a) *Eligible costs.*

(1) The recipient or subrecipient may use ESG funds to pay the costs of contributing data to the HMIS designated by the Continuum of Care for the area, including the costs of:

- (i) Purchasing or leasing computer hardware;
- (ii) Purchasing software or software licenses;
- (iii) Purchasing or leasing equipment, including telephones, fax machines, and furniture;
- (iv) Obtaining technical support;
- (v) Leasing office space;
- (vi) Paying charges for electricity, gas, water, phone service, and high-speed data transmission necessary to operate or contribute data to the HMIS;

(vii) Paying salaries for operating HMIS, including:

- (A) Completing data entry;
- (B) Monitoring and reviewing data quality;
- (C) Completing data analysis;
- (D) Reporting to the HMIS Lead;
- (F) Training staff on using the HMIS or comparable database; and
- (G) Implementing and complying with HMIS requirements;

(viii) Paying costs of staff to travel to and attend HUD-sponsored and HUD-approved training on HMIS and programs authorized by Title IV of the McKinney-Vento Homeless Assistance Act;

(ix) Paying staff travel costs to conduct intake; and

(x) Paying participation fees charged by the HMIS Lead, if the recipient or subrecipient is not the HMIS Lead. The HMIS Lead is the entity designated by the Continuum of Care to operate the area's HMIS.

(2) If the recipient is the HMIS lead agency, as designated by the Continuum of Care in the most recent fiscal year Continuum of Care Homeless Assistance Grants Competition, it may also use ESG funds to pay the costs of:

- (i) Hosting and maintaining HMIS software or data;
- (ii) Backing up, recovering, or repairing HMIS software or data;
- (iii) Upgrading, customizing, and enhancing the HMIS;
- (iv) Integrating and warehousing data, including development of a data warehouse for use in aggregating data from subrecipients using multiple software systems;
- (v) Administering the system;
- (vi) Reporting to providers, the Continuum of Care, and HUD; and
- (vii) Conducting training on using the system or a comparable database, including traveling to the training.

(3) If the subrecipient is a victim services provider or a legal services provider, it may use ESG funds to establish and operate a comparable database that collects client-level data over time (*i.e.*, longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS.

(b) *General restrictions.* Activities funded under this section must comply with HUD's standards on participation, data collection, and reporting under a local HMIS.

§ 576.108 Administrative activities.

(a) *Eligible costs.* The recipient may use up to 7.5 percent of its ESG grant for the payment of administrative costs related to the planning and execution of ESG activities. This does not include staff and overhead costs directly related to carrying out activities eligible under §576.101 through §576.107, because those costs are eligible as part of those activities. Eligible administrative costs include:

(1) *General management, oversight and coordination.* Costs of overall program management, coordination, monitoring, and evaluation. These costs include, but are not limited to, necessary expenditures for the following:

(i) Salaries, wages, and related costs of the recipient's staff, the staff of subrecipients, or other staff engaged in program administration. In charging costs to this category, the recipient may either include the entire salary, wages, and related costs allocable to the program of each person whose *primary* responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The recipient may use only one of these methods for each fiscal year grant. Program administration assignments include the following:

- (A) Preparing program budgets and schedules, and amendments to those budgets and schedules;
- (B) Developing systems for assuring compliance with program requirements;

- (C) Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;
- (D) Monitoring program activities for progress and compliance with program requirements;
- (E) Preparing reports and other documents directly related to the program for submission to HUD;
- (F) Coordinating the resolution of audit and monitoring findings;
- (G) Evaluating program results against stated objectives; and
- (H) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i)(A) through (G) of this section.

- (ii) Travel costs incurred for monitoring of subrecipients;
 - (iii) Administrative services performed under third-party contracts or agreements, including general legal services, accounting services, and audit services; and
 - (iv) Other costs for goods and services required for administration of the program, including rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.
- (2) *Training on ESG requirements.* Costs of providing training on ESG requirements and attending HUD-sponsored ESG trainings.
- (3) *Consolidated plan.* Costs of preparing and amending the ESG and homelessness-related sections of the consolidated plan in accordance with ESG requirements and 24 CFR part 91.
- (4) *Environmental review.* Costs of carrying out the environmental review responsibilities under §576.407.

(b) Sharing requirement.

- (1) *States.* If the recipient is a State, the recipient must share its funds for administrative costs with its subrecipients that are units of general purpose local government. The amount shared must be reasonable under the circumstances. The recipient may share its funds for administrative costs with its subrecipients that are private nonprofit organizations.
- (2) *Territories, metropolitan cities, and urban counties.* If the recipient is a territory, metropolitan city, or urban county, the recipient may share its funds for administrative costs with its subrecipients.

§ 576.109 Indirect costs.

- (a) *In general.* ESG grant funds may be used to pay indirect costs in accordance with OMB Circular A-87 (2 CFR part 225), or A-122 (2 CFR part 230), as applicable.
- (b) *Allocation.* Indirect costs may be allocated to each eligible activity under §576.101 through §576.108, so long as that allocation is consistent with an indirect cost rate proposal developed in accordance with OMB Circular A-87 (2 CFR part 225), or A-122 (2 CFR part 230), as applicable.
- (c) *Expenditure limits.* The indirect costs charged to an activity subject to an expenditure limit under §576.100 must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limit.

Subpart C—Award and Use of Funds

§ 576.200 Submission requirements and grant approval.

- (a) *Application submission and approval.* In addition to meeting the application submission requirements in 24 CFR part 5, subpart K, each State, urban county, or metropolitan city must submit and obtain HUD approval of a consolidated plan in accordance with the requirements in 24 CFR part 91, and each territory must submit and obtain HUD approval of a consolidated plan in accordance with the requirements that apply to local governments under 24 CFR part 91. As provided under 24 CFR 85.12, HUD may impose special conditions or restrictions on a grant, if the recipient is determined to be high risk.
- (b) *Amendments.* The recipient must amend its approved consolidated plan in order to make a change in its allocation priorities; make a change in its method of distributing funds; carry out an activity not previously described in the plan; or change the purpose, scope, location, or beneficiaries of an activity. The amendment must be completed and submitted to HUD in accordance with the requirements under 24 CFR 91.505.

§ 576.201 Matching requirement.

(a) Required amount of matching contributions.

- (1) Except as provided under paragraphs (a)(2) and (a)(3) of this section, the recipient must make matching contributions to supplement the recipient's ESG program in an amount that equals the amount of ESG funds provided by HUD.
- (2) If the recipient is a State, the first \$100,000 of the fiscal year grant is not required to be matched. However, the recipient must transfer the benefit of this exception to its subrecipients that are least capable of providing the recipient with matching contributions.
- (3) This matching requirement does not apply if the recipient is a territory.

(b) Eligible sources of matching contributions.

- (1) Subject to the requirement for States under paragraph (a)(2) of this section, the recipient may require its subrecipients to make matching contributions consistent with this section to help meet the recipient's matching requirement.
- (2) Matching contributions may be obtained from any source, including any Federal source other than the ESG program, as well as state, local, and private sources. However, the following requirements apply to matching contributions from a Federal source of funds:
 - (i) The recipient must ensure the laws governing any funds to be used as matching contributions do not prohibit those funds from being used to match Emergency Solutions Grant (ESG) funds.
 - (ii) If ESG funds are used to satisfy the matching requirements of another Federal program, then funding from that program may not be used to satisfy the matching requirements under this section.

(c) Recognition of matching contributions.

- (1) In order to meet the matching requirement, the matching contributions must meet all requirements that apply to the ESG funds provided by HUD, except for the expenditure limits in §576.100.
- (2) The matching contributions must be provided after the date that HUD signs the grant agreement.
- (3) To count toward the required match for the recipient's fiscal year grant, cash contributions must be expended within the expenditure deadline in §576.203, and noncash contributions must be made within the expenditure deadline in §576.203.
- (4) Contributions used to match a previous ESG grant may not be used to match a subsequent ESG grant.
- (5) Contributions that have been or will be counted as satisfying a matching requirement of another Federal grant or award may not count as satisfying the matching requirement of this section.

(d) Eligible types of matching contributions. The matching requirement may be met by one or both of the following:

- (1) *Cash contributions.* Cash expended for allowable costs, as defined in OMB Circulars A-87 (2 CFR part 225) and A-122 (2 CFR part 230), of the recipient or subrecipient.
- (2) *Noncash contributions.* The value of any real property, equipment, goods, or services contributed to the recipient's or subrecipient's ESG program, provided that if the recipient or subrecipient had to pay for them with grant funds, the costs would have been allowable. Noncash contributions may also include the purchase value of any donated building.

(e) Calculating the amount of noncash contributions.

- (1) To determine the value of any donated material or building, or of any lease, the recipient must use a method reasonably calculated to establish the fair market value.
- (2) Services provided by individuals must be valued at rates consistent with those ordinarily paid for similar work in the recipient's or subrecipient's organization. If the recipient or subrecipient does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market.
- (3) Some noncash contributions are real property, equipment, goods, or services that, if the recipient or subrecipient had to pay for them with grant funds, the payments would have been indirect costs.

Matching credit for these contributions must be given only if the recipient or subrecipient has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of those contributions.

(f) *Costs paid by program income.* Costs paid by program income shall count toward meeting the recipient's matching requirements, provided the costs are eligible ESG costs that supplement the recipient's ESG program.

§ 576.202 Means of carrying out grant activities.

(a) *States.* If the recipient is a State, the recipient may use an amount consistent with the restrictions in §576.100 and §576.108 to carry out administrative activities through its employees or procurement contracts. If the recipient is a State, and has been identified as the HMIS lead by the Continuum of Care, the State may use funds to carry out HMIS activities set forth in §576.107(a)(2). The recipient must subgrant the remaining funds in its fiscal year grant to:

- (1) Units of general purpose local government in the State, which may include metropolitan cities and urban counties that receive ESG funds directly from HUD; or
- (2) Private nonprofit organizations, provided that for emergency shelter activities the recipient obtains a certification of approval from the unit of general purpose local government for the geographic area in which those activities are to be carried out.

(b) *Recipients other than States; subrecipients.* The recipient, if it is not a State, and all subrecipients may carry out all eligible activities through their employees, procurement contracts, or subgrants to private nonprofit organizations. If the recipient is an urban county, it may carry out activities through any of its member governments, so long as the county applies to its members the same requirements that are applicable to local government subrecipients under this part.

§ 576.203 Obligation, expenditure, and payment requirements.

(a) *Obligation of funds.*

(1) *Funds allocated to States.*

- (i) Within 60 days from the date that HUD signs the grant agreement with the State (or grant amendment for reallocated funds), the recipient must obligate the entire grant, except the amount for its administrative costs. This requirement is met by a subgrant agreement with, or a letter of award requiring payment from the grant to, a subrecipient.
- (ii) Within 120 days after the date that the State obligates its funds to a unit of general purpose local government, the subrecipient must obligate all of those funds by a subgrant agreement with, or a letter of award requiring payment to, a private nonprofit organization; a procurement contract; or the written designation of a department within the government of the subrecipient to directly carry out an eligible activity.

(2) *Funds allocated to metropolitan cities, urban counties, and territories.* Within 180 days after the date that HUD signs the grant agreement (or a grant amendment for reallocation of funds) with the metropolitan city, urban county, or territory, the recipient must obligate all the grant amount, except the amount for its administrative costs. This requirement is met by an agreement with, or a letter of award requiring payment to, a subrecipient; a procurement contract; or a written designation of a department within the government of the recipient to directly carry out an eligible activity. If the recipient is an urban county, this requirement may also be met with an agreement with, or letter of award requiring payment to, a member government, which has designated a department to directly carry out an eligible activity.

(b) *Expenditures.* The recipient must draw down and expend funds from each year's grant not less than once during each quarter of the recipient's program year. All of the recipient's grant must be expended for eligible activity costs within 24 months after the date HUD signs the grant agreement with the recipient. For the purposes of this paragraph, expenditure means either an actual cash disbursement for a direct charge for a good or service or an indirect cost or the accrual of a direct charge for a good or service or an indirect cost.

(c) *Payments to subrecipients.* The recipient must pay each subrecipient for allowable costs within 30 days after receiving the subrecipient's complete payment request. This requirement also applies to each subrecipient that is a unit of general purpose local government.

Subpart D—Reallocations

§ 576.300 In general.

- (1) Funds not awarded by HUD due to failure by the recipient to submit and obtain HUD approval of a consolidated plan will be reallocated in accordance with §§576.301 through 576.303.
- (2) Recaptured funds will be awarded by formula. In October and April each year, HUD will determine if the amount of recaptured funds is at least 30 percent of the most recent fiscal year appropriation. If so, HUD will amend all existing grants and reallocate the funds. If the amount is less than 30 percent of the most recent fiscal year appropriation, the funds will be reallocated in conjunction with the next fiscal year's allocation of funding.

§ 576.301 Metropolitan cities and urban counties.

Grant funds returned by a metropolitan city or urban county will be reallocated as follows:

- (a) *Eligible recipient.* HUD will make the funds available to the State in which the city or county is located.
- (b) *Notification of availability.* HUD will promptly notify the State of the availability of the amounts to be reallocated.
- (c) *Application requirement.* Within 45 days after the date of notification, the State must submit to HUD a substantial amendment to its consolidated plan in accordance with 24 CFR part 91.
- (d) *Restrictions that apply to reallocated amounts.* The same requirements that apply to grant funds allocated under §576.3 apply to grant funds reallocated under this section, except that the State must distribute the reallocated funds:
 - (1) To private nonprofit organizations and units of general purpose local government in the geographic area in which the metropolitan city or urban county is located;
 - (2) If funds remain, to private nonprofit organizations and units of general purpose local government located throughout the State.

§ 576.302 States.

Grant funds returned by a State will be reallocated as follows:

- (a) *Eligible recipients.* HUD will make the funds available:
 - (1) To metropolitan cities and urban counties in the State that were not allocated funds under §576.3 because the amount they would have been allocated did not meet the minimum requirement under §576.3(b)(2);
 - (2) If funds remain, to county governments in the State other than urban counties;
 - (3) Then, if funds remain, to metropolitan cities and urban counties in the State that were allocated funds under §576.3.
- (b) *Notification of availability.* HUD will notify eligible recipients of the availability of the funds by a notification letter or Federal Register notice, which will specify how the awards of funds will be made.
- (c) *Application requirements.* Within 45 days after the date of notification, the eligible recipient must submit to HUD:
 - (1) A substantial amendment to its approved consolidated plan in accordance with 24 CFR part 91; or
 - (2) If the eligible recipient does not have an approved consolidated plan, an abbreviated consolidated plan that meets the requirements in the Federal Register notice or notification letter from HUD.
- (d) *Restrictions that apply to reallocated amounts.* The same requirements that apply to grant funds allocated under §576.3 apply to grant funds reallocated under this section.

§ 576.303 Territories.

(a) *General.* Grant funds returned by a territory will be reallocated to other territories, then if funds remain, to States.

(b) *Allocation method.* The funds will be allocated as follows:

(1) For territories, the funds will be allocated among the territories in direct proportion with each territory's share of the total population of all of the eligible territories. If HUD determines that a territory failed to spend its funds in accordance with ESG requirements, then HUD may exclude the territory from the allocation of reallocation amounts under this section.

(2) For States, the funds will be allocated to each State in direct proportion with each State's share of the total amount of funds allocated to States under §576.3.

(c) *Notification of availability.* HUD will notify eligible recipients of the availability of the fund by a letter or Federal Register notice, which will specify how the awards of funds will be made.

(d) *Application requirements.* Within 45 days after the date of notification, the eligible recipient must submit to HUD a substantial amendment to its consolidated plan in accordance with 24 CFR part 91.

(e) *Restrictions that apply to reallocated amounts.* The same requirements that apply to grant funds allocated under §576.3 apply to grant funds reallocated under this section.

Subpart E—Program Requirements

§ 576.400 Area-wide systems coordination requirements.

(a) *Consultation with Continuums of Care.* The recipient must consult with each Continuum of Care that serves the recipient's jurisdiction in determining how to allocate ESG funds each program year; developing the performance standards for, and evaluating the outcomes of, projects and activities assisted by ESG funds; and developing funding, policies, and procedures for the administration and operation of the HMIS.

(b) *Coordination with other targeted homeless services.* The recipient and its subrecipients must coordinate and integrate, to the maximum extent practicable, ESG-funded activities with other programs targeted to homeless people in the area covered by the Continuum of Care or area over which the services are coordinated to provide a strategic, community-wide system to prevent and end homelessness for that area. These programs include:

- (1) Shelter Plus Care Program (24 CFR part 582);
- (2) Supportive Housing Program (24 CFR part 583);
- (3) Section 8 Moderate Rehabilitation Program for Single Room Occupancy Program for Homeless Individuals (24 CFR part 882);
- (4) HUD—Veterans Affairs Supportive Housing (HUD—VASH) (division K, title II, Consolidated Appropriations Act, 2008, Pub. L. 110–161 (2007), 73 FR 25026 (May 6, 2008));
- (5) Education for Homeless Children and Youth Grants for State and Local Activities (title VII–B of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.));
- (6) Grants for the Benefit of Homeless Individuals (section 506 of the Public Health Services Act (42 U.S.C. 290aa–5));
- (7) Healthcare for the Homeless (42 CFR part 51c);
- (8) Programs for Runaway and Homeless Youth (Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.));
- (9) Projects for Assistance in Transition from Homelessness (part C of title V of the Public Health Service Act (42 U.S.C. 290cc–21 et seq.));
- (10) Services in Supportive Housing Grants (section 520A of the Public Health Service Act);
- (11) Emergency Food and Shelter Program (title III of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11331 et seq.));
- (12) Transitional Housing Assistance Grants for Victims of Sexual Assault, Domestic Violence, Dating Violence, and Stalking Program (section 40299 of the Violent Crime Control and Law Enforcement Act (42 U.S.C. 13975));
- (13) Homeless Veterans Reintegration Program (section 5(a)(1)) of the Homeless Veterans Comprehensive Assistance Act (38 U.S.C. 2021);
- (14) Domiciliary Care for Homeless Veterans Program (38 U.S.C. 2043);
- (15) VA Homeless Providers Grant and Per Diem Program (38 CFR part 61);

- (16) Health Care for Homeless Veterans Program (38 U.S.C. 2031);
- (17) Homeless Veterans Dental Program (38 U.S.C. 2062);
- (18) Supportive Services for Veteran Families Program (38 CFR part 62); and
- (19) Veteran Justice Outreach Initiative (38 U.S.C. 2031).

(c) *System and program coordination with mainstream resources.* The recipient and its subrecipients must coordinate and integrate, to the maximum extent practicable, ESG-funded activities with mainstream housing, health, social services, employment, education, and youth programs for which families and individuals at risk of homelessness and homeless individuals and families may be eligible. Examples of these programs include:

- (1) Public housing programs assisted under section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g) (24 CFR parts 905, 968, and 990);
- (2) Housing programs receiving tenant-based or project-based assistance under section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f) (respectively 24 CFR parts 982 and 983);
- (3) Supportive Housing for Persons with Disabilities (Section 811) (24 CFR part 891);
- (4) HOME Investment Partnerships Program (24 CFR part 92);
- (5) Temporary Assistance for Needy Families (TANF) (45 CFR parts 260–265);
- (6) Health Center Program (42 CFR part 51c);
- (7) State Children's Health Insurance Program (42 CFR part 457);
- (8) Head Start (45 CFR chapter XIII, subchapter B);
- (9) Mental Health and Substance Abuse Block Grants (45 CFR part 96); and
- (10) Services funded under the Workforce Investment Act (29 U.S.C. 2801 et seq.).

(d) *Centralized or coordinated assessment.* Once the Continuum of Care has developed a centralized assessment system or a coordinated assessment system in accordance with requirements to be established by HUD, each ESG-funded program or project within the Continuum of Care's area must use that assessment system. The recipient and subrecipient must work with the Continuum of Care to ensure the screening, assessment and referral of program participants are consistent with the written standards required by paragraph (e) of this section. A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system.

(e) *Written standards for providing ESG assistance.*

- (1) If the recipient is a metropolitan city, urban county, or territory, the recipient must have written standards for providing Emergency Solutions Grant (ESG) assistance and must consistently apply those standards for all program participants. The recipient must describe these standards in its consolidated plan.
- (2) If the recipient is a state:
 - (i) The recipient must establish and consistently apply, or require that its subrecipients establish and consistently apply, written standards for providing ESG assistance. If the written standards are established by the subrecipients, the recipient may require these written standards to be:
 - (A) Established for each area covered by a Continuum of Care or area over which the services are coordinated and followed by each subrecipient providing assistance in that area; or
 - (B) Established by each subrecipient and applied consistently within the subrecipient's program.
 - (ii) Written standards developed by the state must be included in the state's Consolidated Plan. If the written standards are developed by its subrecipients, the recipient must describe its requirements for the establishment and implementation of these standards in the state's Consolidated Plan.
- (3) At a minimum these written standards must include:
 - (i) Standard policies and procedures for evaluating individuals' and families' eligibility for assistance under Emergency Solutions Grant (ESG);
 - (ii) Standards for targeting and providing essential services related to street outreach;
 - (iii) Policies and procedures for admission, diversion, referral, and discharge by emergency shelters assisted under ESG, including standards regarding length of stay, if any, and

safeguards to meet the safety and shelter needs of special populations, e.g., victims of domestic violence, dating violence, sexual assault, and stalking; and individuals and families who have the highest barriers to housing and are likely to be homeless the longest;

(iv) Policies and procedures for assessing, prioritizing, and reassessing individuals' and families' needs for essential services related to emergency shelter;

(v) Policies and procedures for coordination among emergency shelter providers, essential services providers, homelessness prevention, and rapid re-housing assistance providers; other homeless assistance providers; and mainstream service and housing providers (see §576.400(b) and (c) for a list of programs with which ESG-funded activities must be coordinated and integrated to the maximum extent practicable);

(vi) Policies and procedures for determining and prioritizing which eligible families and individuals will receive homelessness prevention assistance and which eligible families and individuals will receive rapid re-housing assistance;

(vii) Standards for determining what percentage or amount of rent and utilities costs each program participant must pay while receiving homelessness prevention or rapid re-housing assistance;

(viii) Standards for determining how long a particular program participant will be provided with rental assistance and whether and how the amount of that assistance will be adjusted over time; and

(ix) Standards for determining the type, amount, and duration of housing stabilization and/or relocation services to provide to a program participant, including the limits, if any, on the homelessness prevention or rapid re-housing assistance that each program participant may receive, such as the maximum amount of assistance, maximum number of months the program participant receive assistance; or the maximum number of times the program participant may receive assistance.

(f) *Participation in HMIS.* The recipient must ensure that data on all persons served and all activities assisted under ESG are entered into the applicable community-wide HMIS in the area in which those persons and activities are located, or a comparable database, in accordance with HUD's standards on participation, data collection, and reporting under a local HMIS. If the subrecipient is a victim service provider or a legal services provider, it may use a comparable database that collects client-level data over time (i.e., longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS.

§ 576.401 Evaluation of program participant eligibility and needs.

(a) *Evaluations.* The recipient or its subrecipient must conduct an initial evaluation to determine the eligibility of each individual or family's eligibility for ESG assistance and the amount and types of assistance the individual or family needs to regain stability in permanent housing. These evaluations must be conducted in accordance with the centralized or coordinated assessment requirements set forth under §576.400(d) and the written standards established under §576.400(e).

(b) *Re-evaluations for homelessness prevention and rapid re-housing assistance.*

(1) The recipient or subrecipient must re-evaluate the program participant's eligibility and the types and amounts of assistance the program participant needs not less than once every 3 months for program participants receiving homelessness prevention assistance, and not less than once annually for program participants receiving rapid re-housing assistance. At a minimum, each re-evaluation of eligibility must establish that:

- (i) The program participant does not have an annual income that exceeds 30 percent of median family income for the area, as determined by HUD; and
- (ii) The program participant lacks sufficient resources and support networks necessary to retain housing without ESG assistance.

(2) The recipient or subrecipient may require each program participant receiving homelessness prevention or rapid re-housing assistance to notify the recipient or subrecipient regarding changes in the program participant's income or other circumstances (e.g., changes in household composition) that affect the program participant's need for assistance under ESG. When notified of a relevant change, the

recipient or subrecipient must re-evaluate the program participant's eligibility and the amount and types of assistance the program participant needs.

(c) *Annual income.* When determining the annual income of an individual or family, the recipient or subrecipient must use the standard for calculating annual income under 24 CFR 5.609.

(d) *Connecting program participants to mainstream and other resources.* The recipient and its subrecipients must assist each program participant, as needed, to obtain:

(1) Appropriate supportive services, including assistance in obtaining permanent housing, medical health treatment, mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(2) Other Federal, State, local, and private assistance available to assist the program participant in obtaining housing stability, including:

(i) Medicaid (42 CFR chapter IV, subchapter C);

(ii) Supplemental Nutrition Assistance Program (7 CFR parts 271–283);

(iii) Women, Infants and Children (WIC) (7 CFR part 246);

(iv) Federal-State Unemployment Insurance Program (20 CFR parts 601–603, 606, 609, 614–617, 625, 640, 650);

(v) Social Security Disability Insurance (SSDI) (20 CFR part 404);

(vi) Supplemental Security Income (SSI) (20 CFR part 416);

(vii) Child and Adult Care Food Program (42 U.S.C. 1766(t) (7 CFR part 226));

(viii) Other assistance available under the programs listed in §576.400(c).

(e) *Housing stability case management.*

(1) While providing homelessness prevention or rapid re-housing assistance to a program participant, the recipient or subrecipient must:

(i) Require the program participant to meet with a case manager not less than once per month to assist the program participant in ensuring long-term housing stability; and

(ii) Develop a plan to assist the program participant to retain permanent housing after the ESG assistance ends, taking into account all relevant considerations, such as the program participant's current or expected income and expenses; other public or private assistance for which the program participant will be eligible and likely to receive; and the relative affordability of available housing in the area.

(2) The recipient or subrecipient is exempt from the requirement under paragraph (e)(1)(i) of this section if the Violence Against Women Act of 1994 (42 U.S.C. 13701 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits that recipient or subrecipient from making its shelter or housing conditional on the participant's acceptance of services.

§ 576.402 Terminating assistance.

(a) *In general.* If a program participant violates program requirements, the recipient or subrecipient may terminate the assistance in accordance with a formal process established by the recipient or subrecipient that recognizes the rights of individuals affected. The recipient or subrecipient must exercise judgment and examine all extenuating circumstances in determining when violations warrant termination so that a program participant's assistance is terminated only in the most severe cases.

(b) *Program participants receiving rental assistance or housing relocation and stabilization services.* To terminate rental assistance or housing relocation and stabilization services to a program participant, the required formal process, at a minimum, must consist of:

(1) Written notice to the program participant containing a clear statement of the reasons for termination;

(2) A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(3) Prompt written notice of the final decision to the program participant.

(c) *Ability to provide further assistance.* Termination under this section does not bar the recipient or subrecipient from providing further assistance at a later date to the same family or individual.

§ 576.403 Shelter and housing standards.

(a) *Lead-based paint remediation and disclosure.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations in 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to all shelters assisted under ESG program and all housing occupied by program participants.

(b) *Minimum standards for emergency shelters.* Any building for which Emergency Solutions Grant (ESG) funds are used for conversion, major rehabilitation, or other renovation, must meet state or local government safety and sanitation standards, as applicable, and the following minimum safety, sanitation, and privacy standards. Any emergency shelter that receives assistance for shelter operations must also meet the following minimum safety, sanitation, and privacy standards. The recipient may also establish standards that exceed or add to these minimum standards.

- (1) *Structure and materials.* The shelter building must be structurally sound to protect residents from the elements and not pose any threat to health and safety of the residents. Any renovation (including major rehabilitation and conversion) carried out with ESG assistance must use Energy Star and WaterSense products and appliances.
- (2) *Access.* The shelter must be accessible in accordance with Section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3601 *et seq.*) and implementing regulations at 24 CFR part 100; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131 *et seq.*) and 28 CFR part 35; where applicable.
- (3) *Space and security.* Except where the shelter is intended for day use only, the shelter must provide each program participant in the shelter with an acceptable place to sleep and adequate space and security for themselves and their belongings.
- (4) *Interior air quality.* Each room or space within the shelter must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.
- (5) *Water supply.* The shelter's water supply must be free of contamination.
- (6) *Sanitary facilities.* Each program participant in the shelter must have access to sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.
- (7) *Thermal environment.* The shelter must have any necessary heating/cooling facilities in proper operating condition.
- (8) *Illumination and electricity.* The shelter must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the shelter.
- (9) *Food preparation.* Food preparation areas, if any, must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.
- (10) *Sanitary conditions.* The shelter must be maintained in a sanitary condition.
- (11) *Fire safety.* There must be at least one working smoke detector in each occupied unit of the shelter. Where possible, smoke detectors must be located near sleeping areas. The fire alarm system must be designed for hearing-impaired residents. All public areas of the shelter must have at least one working smoke detector. There must also be a second means of exiting the building in the event of fire or other emergency.

(c) *Minimum standards for permanent housing.* The recipient or subrecipient cannot use ESG funds to help a program participant remain or move into housing that does not meet the minimum habitability standards provided in this paragraph (c). The recipient may also establish standards that exceed or add to these minimum standards.

- (1) *Structure and materials.* The structures must be structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.
- (2) *Space and security.* Each resident must be provided adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.
- (3) *Interior air quality.* Each room or space must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

- (4) *Water supply.* The water supply must be free from contamination.
- (5) *Sanitary facilities.* Residents must have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.
- (6) *Thermal environment.* The housing must have any necessary heating/cooling facilities in proper operating condition.
- (7) *Illumination and electricity.* The structure must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the structure.
- (8) *Food preparation.* All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.
- (9) *Sanitary conditions.* The housing must be maintained in a sanitary condition.
- (10) *Fire safety.*
- (i) There must be a second means of exiting the building in the event of fire or other emergency.
 - (ii) Each unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.
 - (iii) The public areas of all housing must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

§ 576.404 Conflicts of interest.

(a) *Organizational conflicts of interest.* The provision of any type or amount of ESG assistance may not be conditioned on an individual's or family's acceptance or occupancy of emergency shelter or housing owned by the recipient, the subrecipient, or a parent or subsidiary of the subrecipient. No subrecipient may, with respect to individuals or families occupying housing owned by the subrecipient, or any parent or subsidiary of the subrecipient, carry out the initial evaluation required under §576.401 or administer homelessness prevention assistance under §576.103.

(b) *Individual conflicts of interest.* For the procurement of goods and services, the recipient and its subrecipients must comply with the codes of conduct and conflict of interest requirements under 24 CFR 85.36 (for governments) and 24 CFR 84.42 (for private nonprofit organizations). For all other transactions and activities, the following restrictions apply:

(1) *Conflicts prohibited.* No person described in paragraph (b)(2) of this section who exercises or has exercised any functions or responsibilities with respect to activities assisted under the ESG program, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under the program, may obtain a financial interest or benefit from an assisted activity; have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity; or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or during the one-year period following his or her tenure.

(2) *Persons covered.* The conflict-of-interest provisions of paragraph (b)(1) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients.

(3) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of this subsection on a case-by-case basis, taking into account the cumulative effects of the criteria in paragraph (b)(3)(ii) of this section, provided that the recipient has satisfactorily met the threshold requirements of paragraph (b)(3)(i) of this section.

(i) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(A) If the recipient or subrecipient is a government, disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(B) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate state or local law.

(ii) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements under paragraph (b)(3)(i) of this section, HUD must conclude that the exception will serve to further the purposes of the ESG program and the effective and efficient administration of the recipient's or subrecipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

- (A) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;
- (B) Whether an opportunity was provided for open competitive bidding or negotiation;
- (C) Whether the affected person has withdrawn from his or her functions, responsibilities or the decision-making process with respect to the specific activity in question;
- (D) Whether the interest or benefit was present before the affected person was in the position described in paragraph (b)(1) of this section;
- (E) Whether undue hardship results to the recipient, the subrecipient, or the person affected, when weighed against the public interest served by avoiding the prohibited conflict; and
- (F) Any other relevant considerations.

(c) *Contractors.* All contractors of the recipient or subrecipient must comply with the same requirements that apply to subrecipients under this section.

§ 576.405 Homeless participation.

(a) Unless the recipient is a State, the recipient must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policy-making entity of the recipient, to the extent that the entity considers and makes policies and decisions regarding any facilities, services, or other assistance that receive funding under Emergency Solutions Grant (ESG).

(b) If the recipient is unable to meet requirement under paragraph (a), it must instead develop and implement a plan to consult with homeless or formerly homeless individuals in considering and making policies and decisions regarding any facilities, services, or other assistance that receive funding under Emergency Solutions Grant (ESG). The plan must be included in the annual action plan required under 24 CFR 91.220.

(c) To the maximum extent practicable, the recipient or subrecipient must involve homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under ESG, in providing services assisted under ESG, and in providing services for occupants of facilities assisted under ESG. This involvement may include employment or volunteer services.

§ 576.406 Faith-based activities.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to receive ESG funds. Neither the Federal Government nor a State or local government receiving funds under ESG shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the ESG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under ESG. If an organization conducts these activities, the activities must be offered separately, in time or location, from the programs or services funded under ESG, and participation must be voluntary for program participants.

(c) Any religious organization that receives ESG funds retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that the religious organization does not use direct ESG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide ESG-funded services, without removing religious art,

Exhibit D.2- ESG Regulations (24 CFR Part 576)

icons, scriptures, or other religious symbols. In addition, an ESG-funded religious organization retains its authority over its internal governance, and the organization may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) An organization that receives ESG funds shall not, in providing ESG assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

(e) ESG funds may not be used for the rehabilitation of structures to the extent that those structures are used for inherently religious activities. Solutions ESG funds may be used for the rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the ESG program. Where a structure is used for both eligible and inherently religious activities, ESG funds may not exceed the cost of those portions of the rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to ESG funds. Sanctuaries, chapels, or other rooms that an ESG-funded religious congregation uses as its principal place of worship, however, are ineligible for funded improvements under the program. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).

(f) If the recipient or a subrecipient that is a local government voluntarily contributes its own funds to supplement federally funded activities, the recipient or subrecipient has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

§ 576.407 Other Federal requirements.

(a) *General.* The requirements in 24 CFR part 5, subpart A are applicable, including the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a). Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR part 135 apply, except that homeless individuals have priority over other Section 3 residents in accordance with §576.405(c).

(b) *Affirmative outreach.* The recipient or subrecipient must make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. If it is unlikely that the procedures that the recipient or subrecipient intends to use to make known the availability of the facilities, assistance, and services will reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the recipient or subrecipient must establish additional procedures that ensure that those persons are made aware of the facilities, assistance, and services. The recipient and its subrecipients must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Consistent with Title VI and Executive Order 13166, recipients and subrecipients are also required to take reasonable steps to ensure meaningful access to programs and activities for limited English proficiency (LEP) persons.

(c) *Uniform Administrative Requirements.* The requirements of 24 CFR part 85 apply to the recipient and subrecipients that are units of general purpose local government, except that 24 CFR 85.24 and 85.42 do not apply, and program income is to be used as match under 24 CFR 85.25(g). The requirements of 24 CFR part 84 apply to subrecipients that are private nonprofit organizations, except that 24 CFR 84.23 and 84.53 do not apply, and program income is to be used as the nonfederal share under 24 CFR 84.24(b). These regulations include allowable costs and non-Federal audit requirements.

(d) *Environmental review responsibilities.*

(1) Activities under this part are subject to environmental review by HUD under 24 CFR part 50. The recipient shall supply all available, relevant information necessary for HUD to perform for each property any environmental review required by 24 CFR part 50. The recipient also shall carry out mitigating measures required by HUD or select alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement (EIS).

(2) The recipient or subrecipient, or any contractor of the recipient or subrecipient, may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for eligible activities under this part, until HUD has

performed an environmental review under 24 CFR part 50 and the recipient has received HUD approval of the property.

(e) *Davis-Bacon Act*. The provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a-5) do not apply to the ESG program.

(f) *Procurement of Recovered Materials*. The recipient and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 576.408 Displacement, relocation, and acquisition.

(a) *Minimizing displacement*. Consistent with the other goals and objectives of Emergency Solutions Grant (ESG), the recipient and its subrecipients must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under Emergency Solutions Grant (ESG).

(b) *Temporary relocation not permitted*. No tenant-occupant of housing (a dwelling unit) that is converted into an emergency shelter may be required to relocate temporarily for a project assisted with ESG funds, or be required to move to another unit in the same building/complex. When a tenant moves for a project assisted with ESG funds under conditions that trigger the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 42 U.S.C. 4601-4655, as described in paragraph (c) of this section, the tenant should be treated as permanently displaced and offered relocation assistance and payments consistent with that paragraph.

(c) *Relocation assistance for displaced persons*. (1) *In general*. A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with, the URA and 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601 *et seq.*). Whenever possible, minority persons shall be given reasonable opportunities to relocate to comparable and suitable decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require providing a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. (See 49 CFR 24.205(c)(2)(ii)(D).) As required by Section 504 of the Rehabilitation Act (29 U.S.C. 794) and 49 CFR part 24, replacement dwellings must also contain the accessibility features needed by displaced persons with disabilities.

(2) Displaced Person.

(i) For purposes of paragraph (c) of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm, including any corporation, partnership, or association) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under the ESG program. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(A) After the owner (or person in control of the site) issues a notice to move permanently from the property or refuses to renew an expiring lease, if the move occurs on or after:

(I) The date of the submission by the recipient (or subrecipient, as applicable) of an application for assistance to HUD (or the recipient, as applicable) that is later approved and funded if the recipient (or subrecipient, as applicable) has site control as evidenced by a deed, sales contract, or option contract to acquire the property; or

(II) The date on which the recipient (or subrecipient, as applicable) selects the applicable site, if the recipient (or subrecipient, as applicable) does not have site

- control at the time of the application, provided that the recipient (or subrecipient, as applicable) eventually obtains control over the site;
- (B) Before the date described in paragraph (c)(2)(i)(A) of this section, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or
- (C) By a tenant-occupant of a dwelling unit and the tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project.

(ii) Notwithstanding paragraph (c)(2)(i) of this section, a person does not qualify as a displaced person if:

- (A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement; violation of applicable Federal, State or local law, or other good cause; and the recipient determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.
- (B) The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced), and the fact that the person would not qualify as a "displaced person" (or for any assistance under this section) as a result of the project;
- (C) The person is ineligible under 49 CFR 24.2(a)(9)(ii); or
- (D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) The recipient or subrecipient may, at any time, request that HUD to determine whether a displacement is or would be covered by this rule.

(3) *Initiation of negotiations.* For purposes of determining the type of replacement housing payment assistance to be provided to a displaced person pursuant to this section:

- (i) If the displacement is the direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, "initiation of negotiations" means the execution of the agreement between the recipient and the subrecipient or the agreement between the recipient (or subrecipient, as applicable) and the person owning or controlling the property;
- (ii) If site control is only evidenced by an option contract to acquire the property, the "initiation of negotiations" does not become effective until the execution of a written agreement that creates a legally enforceable commitment to proceed with the purchase, such as a sales contract.

(d) *Real property acquisition requirements.* The acquisition of real property, whether funded privately or publicly, for a project assisted with Emergency Solutions Grant (ESG) funds is subject to the URA and Federal governmentwide regulations at 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the recipient's (or subrecipient's, if applicable) determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the recipient under 49 CFR 24.10. A low-income person who disagrees with the recipient's determination may submit a written request for review of that determination by the appropriate HUD field office.

Subpart F—Grant Administration

§ 576.500 Recordkeeping and reporting requirements.

(a) *In general.* The recipient must have policies and procedures to ensure the requirements of this part are met. The policies and procedures must be established in writing and implemented by the recipient and its subrecipients to ensure that ESG funds are used in accordance with the requirements. In addition, sufficient records must be established and maintained to enable the recipient and HUD to determine whether ESG requirements are being met.

(b) *Homeless status.* The recipient must maintain and follow written intake procedures to ensure compliance with the homeless definition in §576.2. The procedures must require documentation at intake of the evidence relied upon to establish and verify homeless status. The procedures must establish the order of priority for obtaining evidence as third-party documentation first, intake worker observations second, and certification from the person seeking assistance third. However, lack of third-party documentation must not prevent an individual or family from being immediately admitted to emergency shelter, receiving street outreach services, or being immediately admitted to shelter or receiving services provided by a victim service provider. Records contained in an HMIS or comparable database used by victim service or legal service providers are acceptable evidence of third-party documentation and intake worker observations if the HMIS retains an auditable history of all entries, including the person who entered the data, the date of entry, and the change made; and if the HMIS prevents overrides or changes of the dates on which entries are made.

(1) If the individual or family qualifies as homeless under paragraph (1)(i) or (ii) of the homeless definition in §576.2, acceptable evidence includes a written observation by an outreach worker of the conditions where the individual or family was living, a written referral by another housing or service provider, or a certification by the individual or head of household seeking assistance.

(2) If the individual qualifies as homeless under paragraph (1)(iii) of the homeless definition in §576.2, because he or she resided in an emergency shelter or place not meant for human habitation and is exiting an institution where he or she resided for 90 days or less, acceptable evidence includes the evidence described in paragraph (b)(1) of this section and one of the following:

(i) Discharge paperwork or a written or oral referral from a social worker, case manager, or other appropriate official of the institution, stating the beginning and end dates of the time residing in the institution. All oral statements must be recorded by the intake worker; or

(ii) Where the evidence in paragraph (b)(2)(i) of this section is not obtainable, a written record of the intake worker's due diligence in attempting to obtain the evidence described in paragraph (b)(2)(i) and a certification by the individual seeking assistance that states he or she is exiting or has just exited an institution where he or she resided for 90 days or less.

(3) If the individual or family qualifies as homeless under paragraph (2) of the homeless definition in §576.2, because the individual or family will imminently lose their housing, the evidence must include:

(i)

(A) A court order resulting from an eviction action that requires the individual or family to leave their residence within 14 days after the date of their application for homeless assistance; or the equivalent notice under applicable state law, a Notice to Quit, or a Notice to Terminate issued under state law;

(B) For individuals and families whose primary nighttime residence is a hotel or motel room not paid for by charitable organizations or federal, state, or local government programs for low-income individuals, evidence that the individual or family lacks the resources necessary to reside there for more than 14 days after the date of application for homeless assistance; or

(C) An oral statement by the individual or head of household that the owner or renter of the housing in which they currently reside will not allow them to stay for more than 14 days after the date of application for homeless assistance. The intake worker must record the statement and certify that it was found credible. To be found credible, the oral statement must either: (I) be verified by the owner or renter of the housing in which the individual or family resides at the time of application for homeless assistance and documented by a written certification by the owner or renter or by the intake worker's recording of the owner or renter's oral statement; or (II) if the intake worker is unable to contact the owner or renter, be documented by a written certification by the intake worker of his or her due diligence in attempting to obtain the owner or renter's verification and the written certification by the individual or head of household seeking assistance that his or her statement was true and complete;

(ii) Certification by the individual or head of household that no subsequent residence has been identified; and

(iii) Certification or other written documentation that the individual or family lacks the resources and support networks needed to obtain other permanent housing.

(4) If the individual or family qualifies as homeless under paragraph (3) of the homeless definition in §576.2, because the individual or family does not otherwise qualify as homeless under the homeless definition but is an unaccompanied youth under 25 years of age, or homeless family with one or more children or youth, and is defined as homeless under another Federal statute or section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), the evidence must include:

- (i) For paragraph (3)(i) of the homeless definition in §576.2, certification of homeless status by the local private nonprofit organization or state or local governmental entity responsible for administering assistance under the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*), the Head Start Act (42 U.S.C. 9831 *et seq.*), subtitle N of the Violence Against Women Act of 1994 (42 U.S.C. 14043e *et seq.*), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*), section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*), as applicable;
- (ii) For paragraph (3)(ii) of the homeless definition in §576.2, referral by a housing or service provider, written observation by an outreach worker, or certification by the homeless individual or head of household seeking assistance;
- (iii) For paragraph (3)(iii) of the homeless definition in §576.2, certification by the individual or head of household and any available supporting documentation that the individual or family moved two or more times during the 60-day period immediately preceding the date of application for homeless assistance, including: recorded statements or records obtained from each owner or renter of housing, provider of shelter or housing, or social worker, case worker, or other appropriate official of a hospital or institution in which the individual or family resided; or, where these statements or records are unobtainable, a written record of the intake worker's due diligence in attempting to obtain these statements or records. Where a move was due to the individual or family fleeing domestic violence, dating violence, sexual assault, or stalking, then the intake worker may alternatively obtain a written certification from the individual or head of household seeking assistance that they were fleeing that situation and that they resided at that address; and
- (iv) For paragraph (3)(iv) of the homeless definition in §576.2, written diagnosis from a professional who is licensed by the state to diagnose and treat that condition (or intake staff-recorded observation of disability that within 45 days of date of the application for assistance is confirmed by a professional who is licensed by the state to diagnose and treat that condition); employment records; department of corrections records; literacy, English proficiency tests; or other reasonable documentation of the conditions required under paragraph (3)(iv) of the homeless definition.

(5) If the individual or family qualifies under paragraph (4) of the homeless definition in §576.2, because the individual or family is fleeing domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions related to violence, then acceptable evidence includes an oral statement by the individual or head of household seeking assistance that they are fleeing that situation, that no subsequent residence has been identified and that they lack the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other housing. If the individual or family is receiving shelter or services provided by a victim service provider, the oral statement must be documented by either a certification by the individual or head of household; or a certification by the intake worker. Otherwise, the oral statement that the individual or head of household seeking assistance has not identified a subsequent residence and lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain housing must be documented by a certification by the individual or head of household that the oral statement is true and complete, and, where the safety of the individual or family would not be jeopardized, the domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening condition must be verified by a written observation by the intake worker or a written referral by a housing or service provider, social worker, legal assistance provider, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or any other organization from whom the individual or head of household has sought assistance for domestic violence, dating violence, sexual assault, or stalking. The written referral or observation need only include the minimum amount of information necessary to document that the individual or family is fleeing, or attempting to flee domestic violence, dating violence, sexual assault, and stalking.

(c) *At risk of homelessness status.* For each individual or family who receives Emergency Solutions Grant (ESG) homelessness prevention assistance, the records must include the evidence relied upon to establish and verify the individual or family's "at risk of homelessness" status. This evidence must include an intake and certification form that meets HUD specifications and is completed by the recipient or subrecipient. The evidence must also include:

(1) If the program participant meets the criteria under paragraph (1) of the "at risk of homelessness" definition in §576.2:

- (i) The documentation specified under this section for determining annual income;
- (ii) The program participant's certification on a form specified by HUD that the program participant has insufficient financial resources and support networks; e.g., family, friends, faith-based or other social networks, immediately available to attain housing stability and meets one or more of the conditions under paragraph (1)(iii) of the definition of "at risk of homelessness" in §576.2;
- (iii) The most reliable evidence available to show that the program participant does not have sufficient resources or support networks; e.g., family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the "homeless" definition. Acceptable evidence includes:

- (A) Source documents (e.g., notice of termination from employment, unemployment compensation statement, bank statement, health-care bill showing arrears, utility bill showing arrears);
- (B) To the extent that source documents are unobtainable, a written statement by the relevant third party (e.g., former employer, public administrator, relative) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party that the applicant meets one or both of the criteria under paragraph (1)(ii) of the definition of "at risk of homelessness" in §576.2; or
- (C) To the extent that source documents and third-party verification are unobtainable, a written statement by the recipient's or subrecipient's intake staff describing the efforts taken to obtain the required evidence; and

(iv) The most reliable evidence available to show that the program participant meets one or more of the conditions under paragraph (1)(iii) of the definition of "at risk of homelessness" in §576.2. Acceptable evidence includes:

- (A) Source documents that evidence one or more of the conditions under paragraph (1)(iii) of the definition (e.g., eviction notice, notice of termination from employment, bank statement);
- (B) To the extent that source documents are unobtainable, a written statement by the relevant third party (e.g., former employer, owner, primary leaseholder, public administrator, hotel or motel manager) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party that the applicant meets one or more of the criteria under paragraph (1)(iii) of the definition of "at risk of homelessness"; or
- (C) To the extent that source documents and third-party verification are unobtainable, a written statement by the recipient's or subrecipient's intake staff that the staff person has visited the applicant's residence and determined that the applicant meets one or more of the criteria under paragraph (1)(iii) of the definition or, if a visit is not practicable or relevant to the determination, a written statement by the recipient's or subrecipient's intake staff describing the efforts taken to obtain the required evidence; or

(2) If the program participant meets the criteria under paragraph (2) or (3) of the "at risk of homelessness" definition in §576.2, certification of the child or youth's homeless status by the agency or organization responsible for administering assistance under the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*), the Head Start Act (42 U.S.C. 9831 *et seq.*), subtitle N of the Violence Against Women Act of 1994 (42 U.S.C. 14043e *et seq.*), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*), section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*), as applicable.

(d) *Determinations of ineligibility.* For each individual and family determined ineligible to receive Emergency Solutions Grant (ESG) assistance, the record must include documentation of the reason for that determination.

(e) *Annual income.* For each program participant who receives homelessness prevention assistance, or who receives rapid re-housing assistance longer than one year, the following documentation of annual income must be maintained:

- (1) Income evaluation form containing the minimum requirements specified by HUD and completed by the recipient or subrecipient; and
- (2) Source documents for the assets held by the program participant and income received over the most recent period for which representative data is available before the date of the evaluation (e.g., wage statement, unemployment compensation statement, public benefits statement, bank statement);
- (3) To the extent that source documents are unobtainable, a written statement by the relevant third party (e.g., employer, government benefits administrator) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party of the income the program participant received over the most recent period for which representative data is available; or
- (4) To the extent that source documents and third party verification are unobtainable, the written certification by the program participant of the amount of income the program participant received for the most recent period representative of the income that the program participant is reasonably expected to receive over the 3-month period following the evaluation.

(f) *Program participant records.* In addition to evidence of homeless status or "at risk of homelessness" status, as applicable, records must be kept for each program participant that document:

- (1) The services and assistance provided to that program participant, including, as applicable, the security deposit, rental assistance, and utility payments made on behalf of the program participant;
- (2) Compliance with the applicable requirements for providing services and assistance to that program participant under the program components and eligible activities provisions at §576.101 through §576.106, the provision on determining eligibility and amount and type of assistance at §576.401(a) and (b), and the provision on using appropriate assistance and services at §576.401(d) and (e); and
- (3) Where applicable, compliance with the termination of assistance requirement in §576.402.

(g) *Centralized or coordinated assessment systems and procedures.* The recipient and its subrecipients must keep documentation evidencing the use of, and written intake procedures for, the centralized or coordinated assessment system(s) developed by the Continuum of Care(s) in accordance with the requirements established by HUD.

(h) *Rental assistance agreements and payments.* The records must include copies of all leases and rental assistance agreements for the provision of rental assistance, documentation of payments made to owners for the provision of rental assistance, and supporting documentation for these payments, including dates of occupancy by program participants.

(i) *Utility allowance.* The records must document the monthly allowance for utilities (excluding telephone) used to determine compliance with the rent restriction.

(j) *Shelter and housing standards.* The records must include documentation of compliance with the shelter and housing standards in §576.403, including inspection reports.

(k) *Emergency shelter facilities.* The recipient must keep records of the emergency shelters assisted under the ESG program, including the amount and type of assistance provided to each emergency shelter. As applicable, the recipient's records must also include documentation of the value of the building before the rehabilitation of an existing emergency shelter or after the conversion of a building into an emergency shelter and copies of the recorded deed or use restrictions.

(l) *Services and assistance provided.* The recipient must keep records of the types of essential services, rental assistance, and housing stabilization and relocation services provided under the recipient's program and the amounts spent on these services and assistance. The recipient and its subrecipients that are units of general purpose local government must keep records to demonstrate compliance with the maintenance of effort

requirement, including records of the unit of the general purpose local government's annual budgets and sources of funding for street outreach and emergency shelter services.

(m) *Coordination with Continuum(s) of Care and other programs.* The recipient and its subrecipients must document their compliance with the requirements of §576.400 for consulting with the Continuum(s) of Care and coordinating and integrating ESG assistance with programs targeted toward homeless people and mainstream service and assistance programs.

(n) *HMIS.* The recipient must keep records of the participation in HMIS or a comparable database by all projects of the recipient and its subrecipients.

(o) *Matching.* The recipient must keep records of the source and use of contributions made to satisfy the matching requirement in §576.201. The records must indicate the particular fiscal year grant for which each matching contribution is counted. The records must show how the value placed on third-party, noncash contributions was derived. To the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocation of regular personnel costs.

(p) *Conflicts of interest.* The recipient and its subrecipients must keep records to show compliance with the organizational conflicts-of-interest requirements in §576.404(a), a copy of the personal conflicts of interest policy or codes of conduct developed and implemented to comply with the requirements in §576.404(b), and records supporting exceptions to the personal conflicts of interest prohibitions.

(q) *Homeless participation.* The recipient must document its compliance with the homeless participation requirements under §576.405.

(r) *Faith-based activities.* The recipient and its subrecipients must document their compliance with the faith-based activities requirements under §576.406.

(s) *Other Federal requirements.* The recipient and its subrecipients must document their compliance with the Federal requirements in §576.407, as applicable, including:

- (1) Records demonstrating compliance with the nondiscrimination and equal opportunity requirements under §576.407(a), including data concerning race, ethnicity, disability status, sex, and family characteristics of persons and households who are applicants for, or program participants in, any program or activity funded in whole or in part with ESG funds and the affirmative outreach requirements in §576.407(b).
- (2) Records demonstrating compliance with the uniform administrative requirements in 24 CFR part 85 (for governments) and 24 CFR part 84 (for nonprofit organizations).
- (3) Records demonstrating compliance with the environmental review requirements, including flood insurance requirements.
- (4) Certifications and disclosure forms required under the lobbying and disclosure requirements in 24 CFR part 87.

(t) *Relocation.* The records must include documentation of compliance with the displacement, relocation, and acquisition requirements in §576.408.

(u) *Financial records.*

- (1) The recipient must retain supporting documentation for all costs charged to the ESG grant.
- (2) The recipient and its subrecipients must keep documentation showing that ESG grant funds were spent on allowable costs in accordance with the requirements for eligible activities under §576.101-§576.109 and the cost principles in OMB Circulars A-87 (2 CFR part 225) and A-122 (2 CFR part 230).
- (3) The recipient and its subrecipients must retain records of the receipt and use of program income.
- (4) The recipient must keep documentation of compliance with the expenditure limits in §576.100 and the expenditure deadline in §576.203.

(v) *Subrecipients and contractors.*

- (1) The recipient must retain copies of all solicitations of and agreements with subrecipients, records of all payment requests by and dates of payments made to subrecipients, and documentation of all monitoring and sanctions of subrecipients, as applicable. If the recipient is a State, the recipient must keep records of each recapture and distribution of recaptured funds under §576.501.
- (2) The recipient and its subrecipients must retain copies of all procurement contracts and documentation of compliance with the procurement requirements in 24 CFR 85.36 and 24 CFR 84.40–84.48.
- (3) The recipient must ensure that its subrecipients comply with the recordkeeping requirements specified by the recipient and HUD notice or regulations.

(w) *Other records specified by HUD.* The recipient must keep other records specified by HUD.

(x) *Confidentiality.*

(1) The recipient and its subrecipients must develop and implement written procedures to ensure:

- (i) All records containing personally identifying information (as defined in HUD's standards for participation, data collection, and reporting in a local HMIS) of any individual or family who applies for and/or receives ESG assistance will be kept secure and confidential;
- (ii) The address or location of any domestic violence, dating violence, sexual assault, or stalking shelter project assisted under the ESG will not be made public, except with written authorization of the person responsible for the operation of the shelter; and
- (iii) The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of the recipient or subrecipient and consistent with state and local laws regarding privacy and obligations of confidentiality.

(2) The confidentiality procedures of the recipient and its subrecipients must be in writing and must be maintained in accordance with this section.

(y) *Period of record retention.* All records pertaining to each fiscal year of ESG funds must be retained for the greater of 5 years or the period specified below. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

- (1) Documentation of each program participant's qualification as a family or individual at risk of homelessness or as a homeless family or individual and other program participant records must be retained for 5 years after the expenditure of all funds from the grant under which the program participant was served;
- (2) Where ESG funds are used for the renovation of an emergency shelter involves costs charged to the ESG grant that exceed 75 percent of the value of the building before renovation, records must be retained until 10 years after the date that ESG funds are first obligated for the renovation; and
- (3) Where ESG funds are used to convert a building into an emergency shelter and the costs charged to the ESG grant for the conversion exceed 75 percent of the value of the building after conversion, records must be retained until 10 years after the date that ESG funds are first obligated for the conversion.

(z) *Access to records.*

- (1) *Federal government rights.* Notwithstanding the confidentiality procedures established under paragraph (w) of this section, HUD, the HUD Office of the Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, must have the right of access to all books, documents, papers, or other records of the recipient and its subrecipients that are pertinent to the ESG grant, in order to make audits, examinations, excerpts, and transcripts. These rights of access are not limited to the required retention period but last as long as the records are retained.
- (2) *Public rights.* The recipient must provide citizens, public agencies, and other interested parties with reasonable access (consistent with state and local laws regarding privacy and obligations of confidentiality and the confidentiality requirements in this part) to records regarding any uses of ESG funds the recipient received during the preceding 5 years.

(aa) *Reports.* The recipient must collect and report data on its use of ESG funds in the Integrated Disbursement and Information System (IDIS) and other reporting systems, as specified by HUD. The recipient must also

comply with the reporting requirements in 24 CFR parts 85 and 91 and the reporting requirements under the Federal Funding Accountability and Transparency Act of 2006, (31 U.S.C. 6101 note), which are set forth in appendix A to 2 CFR part 170.

§ 576.501 Enforcement.

(a) Performance reviews.

(1) HUD will review the performance of each recipient in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from the recipient and, when appropriate, its subrecipients, as well as information from onsite monitoring, audit reports, and information from IDIS and HMIS. Where applicable, HUD may also consider relevant information pertaining to the recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the recipient.

(2) If HUD determines preliminarily that the recipient or one of its subrecipients has not complied with an ESG program requirement, HUD will give the recipient notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD and on the basis of substantial facts and data, that the recipient has complied with Emergency Solutions Grant (ESG) requirements. HUD may change the method of payment to require the recipient to obtain HUD's prior approval each time the recipient draws down Emergency Solutions Grant (ESG) funds. To obtain prior approval, the recipient may be required to manually submit its payment requests and supporting documentation to HUD in order to show that the funds to be drawn down will be expended on eligible activities in accordance with all ESG program requirements.

(3) If the recipient fails to demonstrate to HUD's satisfaction that the activities were carried out in compliance with ESG program requirements, HUD will take one or more of the remedial actions or sanctions specified in paragraph (b) of this section.

(b) Remedial actions and sanctions. Remedial actions and sanctions for a failure to meet an ESG program requirement will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

(1) HUD may instruct the recipient to submit and comply with proposals for action to correct, mitigate, and prevent noncompliance with ESG requirements, including:

- (i) Preparing and following a schedule of actions for carrying out activities affected by the noncompliance, including schedules, timetables, and milestones necessary to implement the affected activities;
- (ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;
- (iii) Canceling or revising activities likely to be affected by the noncompliance, before expending ESG funds for the activities;
- (iv) Reprogramming ESG funds that have not yet been expended from affected activities to other eligible activities;
- (v) Suspending disbursement of ESG funds for some or all activities;
- (vi) Reducing or terminating the remaining grant of a subrecipient and reallocating those funds to other subrecipients; and
- (vii) Making matching contributions before or as draws are made from the recipient's ESG grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD deems it necessary to preclude the further expenditure of funds for affected activities.

(4) HUD may remove the recipient from participation in reallocations of funds under subpart D of this part.

(5) HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.

(6) HUD may require the recipient to reimburse its line of credit in an amount equal to the funds used for the affected activities.

- (7) HUD may reduce or terminate the remaining grant of a recipient and reallocate those funds to other recipients in accordance with subpart D of this part.
- (8) HUD may condition a future grant.
- (9) HUD may take other remedies that are legally available.

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with an ESG program requirement or its subgrant agreement, the recipient must take appropriate actions, as prescribed for HUD in paragraphs (a) and (b) of this section. If the recipient is a State and funds become available as a result of an action under this section, the recipient must reallocate those funds to other subrecipients as soon as practicable. If the recipient is a unit of general purpose local government of territory, it must either reallocate those funds to other subrecipients or reprogram the funds for other activities to be carried out by the recipient as soon as practicable. The recipient must amend its Consolidated Plan in accordance with its citizenship participation plan if funds become available and are reallocated or reprogrammed under this section. The reallocated or reprogrammed funds must be used by the expenditure deadline in §576.203.



CITY OF AUSTIN

**EMERGENCY SOLUTIONS GRANT (ESG)
HOMELESS ELIGIBILITY FORM**

ESG ELIGIBILITY CATEGORY: (check only one)

NOTE: Form is not complete unless the client and staff have signed the second side of document.

☐

Category 1- Literally Homeless

- (1) Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
- Has a primary nighttime residence that is a public or private place not meant for human habitation;
 - Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, and local government programs; or
 - Is exiting an institution where (s)he has resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.

DOCUMENTATION REQUIRED IN HUD'S PREFERRED ORDER:

- Third Party/Written:
If unsheltered: Written referral by of street outreach, law enforcement, EMS, or other shelter record, or homeless certification; or
If sheltered/exiting an institution: HMIS shelter stay record, or homeless certification, or referral from shelter services or other housing provider; or
- Written observation by the intake staff worker; or
- Self-Certification by the individual or head of household seeking assistance stating that s(he) was living on the streets or in shelter;
- For individuals exiting an institution- one of the forms of evidence above and:
 - Discharge paperwork or written/oral referral, or
 - Written record of intake worker's due diligence to obtain evidence and certification by individual that they exited institution.

☐

Category 2- Imminently Losing Primary Nighttime Residence- Ineligible Category for Rapid Rehousing

- (2) Individual or family who will imminently lose their primary nighttime residence within 14 days, provided that:
- No subsequent residence has been identified; and
 - The household lacks the resources or support networks needed to obtain other permanent housing.

DOCUMENTATION REQUIRED – at least one of the following must state the household must leave within 14 days:

- A court order resulting from an eviction notice or equivalent notice, or a formal eviction notice; or
- For individuals in hotels or motels that they are paying for, evidence that the individual or family lacks the necessary financial resources to stay for more than 14 days; or
- An oral statement by the individual or head of household stating that the owner or renter of the residence will not allow them to stay for more than 14 days. The intake worker must verify the statement either through contact with the owner or renter, or documentation of due diligence in attempting to obtain such a statement.
- Certification that no subsequent residence has been identified; and
- Self-certification or other written documentation that the individual lacks the financial resources and support necessary to obtain permanent housing.

☐

**Category 3- Persistent Housing Instability- Ineligible Category
People with ALL of these characteristics:**

- Unaccompanied youth (less than 25 years of age) or family with children and youth;
- Defined as homeless under other federal statutes (for example the definition used by the Department of Education) who do not otherwise qualify as homeless under HUD's definition;
- Has not had a lease, ownership interest, or occupancy agreement in permanent housing in the 60 days prior to applying for assistance;
- Has moved two or more times in the 60 days immediately prior to applying for assistance;
- Has one or more of the following: chronic disabilities, chronic physical or mental health conditions substance addiction histories of domestic violence or childhood abuse child with a disability two or more barriers to employment, which include
 - lack of a high school degree or GED - illiteracy - low English proficiency - history of incarceration or detention for criminal activity - history of unstable employment

DOCUMENTATION REQUIRED:

- A nonprofit, state, or local government entity that administers the other federal statute must certify that household qualifies as homeless under that statute's definition.
- To document that the individual has not had a lease, occupancy agreement, or ownership interest in housing in the last 60 days, certification by the individual or head of household, written observation by an outreach worker, or referral by a provider.

- To document that the individual or family has moved two times in the past 60 days, a certification from the individual and supporting documentation, including records or statements from each owner or renter of housing, shelter or housing provider, or social worker, case worker, or appropriate official of an institution where the individual or family resided. Where these statements are unobtainable, the intake worker should include a written record of his or her due diligence in attempting to obtain them.
- Evidence of barriers includes: Written diagnosis from a licensed professional, employment records, department of corrections records, literacy, and English proficiency tests. For disability, any of the above, written verification from the Social Security Administration (or a disability check receipt), or observation of the intake worker of disability, which must be confirmed within 45 days by an appropriate professional.

☐

Category 4- Fleeing/Attempting to Flee Domestic Violence

- (4) Any individual or family who:
- Is fleeing, or is attempting to flee domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence;
 - Has no other residence; and
 - Lacks the resources or support networks to obtain other permanent housing.

DOCUMENTATION REQUIRED:

- *For victim service providers:*
 - An oral statement by the individual or head of household seeking assistance which states: they are fleeing they have no subsequent residence; and they lack resources. Statement must be documented by a self-certification or a certification by the intake worker.
- *For non-victim service providers:*
 - Oral statement by the individual or head of household seeking assistance that they are fleeing. This statement is documented by a self-certification or by the caseworker. Where the safety of the individual or family is not jeopardized, the oral statement must be verified; and
 - Certification by the individual or head of household that no subsequent residence has been identified; and
 - Self-certification or other written documentation that the individual lacks the financial resources and support necessary to obtain permanent housing.

DOES THIS CLIENT ALSO MEET THE FOLLOWING DEFINITION OF A CHRONICALLY HOMELESS PERSON?

Chronically homeless means:

- (1) A "homeless individual with a disability," as defined in section 401(9) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(9)), who: (i) Lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and (ii) Has been homeless and living as described in paragraph (1)(i) of this definition continuously for at least 12 months or on at least 4 separate occasions in the last 3 years, as long as the combined occasions equal at least 12 months and each break in homelessness separating the occasions included at least 7 consecutive nights of not living as described in paragraph (1)(i). Stays in institutional care facilities for fewer than 90 days will not constitute as a break in homelessness, but rather such stays are included in the 12-month total, as long as the individual was living or residing in a place not meant for human habitation, a safe haven, or an emergency shelter immediately before entering the institutional care facility;
- (2) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or
- (3) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) or (2) of this definition, including a family whose composition has fluctuated while the head of household has been homeless. (Updated 12-4-15)

☐ **YES**

☐ **NO**

☐ **DON'T KNOW**

If **YES**, then provide the client information requested below:

HOUSING HISTORY FOR CHRONICALLY HOMELESS PERSONS

MOST RECENT YEAR

Month/Year	Description of Homelessness

SECOND YEAR

Month/Year	Description of Homelessness

THIRD YEAR

Month/Year	Description of Homelessness

The above statement of my homeless status is true and complete.

CLIENT NAME (Printed)

CLIENT SIGNATURE

DATE

FOR INTAKE STAFF ONLY:

Verification Methods: Describe methods to obtain third party documentation (shelter records; outreach programs; medical services; law enforcement; etc.). Describe the outcome of the efforts to obtain documents.

The above statements regarding this client's ESG homeless eligibility is true and complete to the best of my knowledge. I have attempted to obtain third party documentation to the best of my ability.

INTAKE STAFF SIGNATURE

DATE



U.S. Dept. of Housing and Urban Development (HUD)
Habitability Standards (including lead-based paint)

Instructions: Place a check mark in the correct column to indicate whether the property is approved or deficient with respect to each standard. The property must meet ALL standards in order to be approved. A copy of this checklist should be placed in the client file.

STANDARD (24 CFR part 576.403c)	Approved	Deficient
1. Structure and Materials: The structure is structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.		
2. Space and Security: Each resident is provided adequate space and security for themselves and their belongings. Each resident is provided an acceptable place to sleep.		
3. Interior Air Quality: Each room or space has a natural or mechanical means of ventilation. The interior air is free of pollutants at a level that might threaten or harm the health of residents.		
4. Water supply: The water supply is free from contaminants.		
5. Sanitary Facilities: Residents have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and disposal of human waste.		
6. Thermal Environment: The housing has any necessary heating/cooling facilities in proper operating condition.		
7. Illumination and Electricity: The structure has adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There are sufficient electrical sources to permit the safe use of electrical appliances in the structure.		
8. Food preparation: All food preparation areas contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.		
9. Sanitary Condition: The housing is maintained in sanitary condition.		
10. Fire Safety: a. There is a second means of exiting the building in the event of a fire or other emergency. b. The unit includes at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors are located, to the extent practicable, in a hallway adjacent to a bedroom. c. If the unit is occupied by hearing-impaired persons, smoke detectors have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.		



U.S. Dept. of Housing and Urban Development (HUD)
Habitability Standards (including lead-based paint)

d. The public areas are equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, day care centers, hallways, stairways, and other common areas.		
11. Meets additional recipients/sub recipient standards (if any):		
12. Lead-based paint. If the structure was built prior to 1978, and a child under the age of six or a pregnant woman will reside on the property, and the property has defective paint surface inside or outside the structure, the property cannot be approved until the defective surface is appropriately treated. Defective paint surface means: applicable surface in which paint is cracking, scaling, chipping, peeling or loose. a. Building built/rehabbed before 1978? ____ yes or ____ no b. Children under 6 present? ____ yes ____ no c. Pregnant woman present? ____ yes ____ no		

I certify that I have evaluated the property located at the address below to the best of my ability and find the following:

The property meets ALL of the above standards: ____ yes ____ no

Therefore, I make the following determination:

The property is approved: ____ yes ____ no

Comments: _____

Client information:

Print Name _____

Unit Street Address _____ Apt. # _____

City: _____ State: _____ Zip Code: _____

Evaluator Information:

Print name: _____

Signature: _____

Date of Review: _____

FEDERAL AWARD IDENTIFICATION

1. Subrecipient Name: Front Steps, Inc.
2. Subrecipient's DUNS Number: 071056936
3. Federal Award Identification Number: E-20-MC-48-0500
4. Federal Award Date (date the Federal Award is signed by Federal awarding agency official): 9/21/2020
5. Subaward Period of Performance Start and End Date:
Start Date 10/1/2020
End Date 9/30/2021
6. Amount of Federal Funds Obligated to (or Contracted for) by this action by the pass-through entity to the Subrecipient: \$313,922
7. Total Amount of Federal Funds Obligated (or Contracted for) to the Subrecipient by the pass-through entity, including the current obligation: \$941,766
8. Total Amount of Federal Award awarded to the pass-through entity: \$682,911
9. Federal Award Project Description (please provide a brief, but concise, description of the purpose and intended outcomes of the subaward):
Funds will be used to operate the ARCH homeless shelter, and provide a safe and clean facility that provides a respite from the elements, functioning as a place for clients to meet several of their basic needs, and serving as an entry portal to a variety of programs and services dedicated to assisting and empowering clients to achieve self-sufficiency.
10. Name of Federal Awarding Agency, Pass Through Entity, and contact information for Awarding Official:
Federal Awarding Agency: U.S. Dept. of Housing and Urban Development
Pass Through Entity: Austin Public Health, City of Austin
Awarding Official Contact Information: Rosie Trulove, NHCD Department Director
(512) 974-3064, rosie.trulove@austintexas.gov
11. CFDA Number and Name: Emergency Solutions Grant CFDA #14.31
12. Is award for Research & Development? No
13. Indirect Cost Rate for the Federal Award: Not Applicable



Amendment No. 1
to
Agreement No. 4700 NG190000012
for
Social Services
between
FRONT STEPS, INC.
and the
CITY OF AUSTIN

***Emergency Solutions Grant- Shelter Operations
CFDA # 14.231***

- 1.0 The City of Austin and the Grantee hereby agree to the Agreement revisions listed below.
- 2.0 The total amount for this Amendment to the Agreement is ***Three Hundred Thirteen Thousand Nine Hundred Twenty Two dollars (\$313,922)***. The total Agreement amount is recapped below:

Term	Agreement Change Amount	Total Agreement Amount
Basic Term: (Oct. 1, 2018 – Sept. 30, 2019)	n/a	313,922
Amendment No. 1: Exercise Extension Option #1 (Oct. 1, 2019 – Sept. 30, 2020)	\$ 313,922	\$ 627,844

- 3.0 The following changes have been made to the original Agreement EXHIBITS:

Exhibit A.1 -- Program Work Statement is deleted in its entirety and replaced with a new **Exhibit A.1 -- Program Work Statement**. [Revised 1/13/2020]

Exhibit B.1 -- Program Budget and Narrative is deleted in its entirety and replaced with a new **Exhibit B.1 -- Program Budget and Narrative**. [Revised 1/13/2020]

Exhibit D.1 -- ESG Reporting Requirements is deleted in its entirety and replaced with **Exhibit D.1 -- ESG Program Standards, Policies, and Procedures**. [Revised 12/6/2019]

Exhibit D.4 -- ESG Program Standards is deleted in its entirety from the Agreement.

Exhibit F -- Federal Award Identification is deleted in its entirety and replaced with a new **Exhibit F -- Federal Award Identification**. [Revised 12/10/2019]

- 4.0 The following Terms and Conditions have been MODIFIED:

Section 4.1.2 Payment to the Grantee shall be made in the following increments:

4.1.2.1 For the Program Period of 10/1/2019 through 9/30/2020, the payment from the City to the Grantee shall not exceed \$313,922 (*Three Hundred Thirteen Thousand Nine Hundred Twenty Two dollars*).

- 5.0 MBE/WBE goals were not established for this Agreement.
- 6.0 Based on the criteria in the City of Austin Living Wage Resolution #020509-91, the Living Wage requirement does not apply to this Agreement.
- 7.0 By signing this Amendment, the Grantee certifies that the Grantee and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the Exclusion records found at SAM.gov, the State of Texas, or the City of Austin.
- 8.0 All other Agreement terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced Agreement.

GRANTEE

Signature: _____

FRONT STEPS, INC.
Greg McCormack, Executive Director
500 E. 7th Street
Austin, TX 78701

Date: 1/15/2020

CITY OF AUSTIN

Signature: _____

Yvonne Gooden-Brown
City of Austin
Purchasing Office
PO Box 1088
Austin, TX 78767

Date: 1-29-2020

Program Work Statement

Contract Term: 10/01/2018 - 09/30/2020

Program Period: 10/01/2019 - 09/30/2020

Program Goals and Objectives

Based on the belief that all people deserve the dignity of a safe place to call home, Front Steps' mission is to provide a pathway home for our neighbors experiencing homelessness by offering emergency shelter, affordable housing, recuperative medical care, supportive services, and promote community awareness. Having this mission in mind, Front Steps manages the ARCH facility to serve multiple purposes, including: operating a safe and clean shelter that provides a respite from the elements, functioning as a place for clients to meet several of their basic needs, and serving as an entry portal to a variety of programs and services dedicated to assisting and empowering clients to achieve self-sufficiency and resolve their homelessness as rapidly as possible.

Program Clients Served

Front Steps uses the U.S. Department of Housing and Urban Development (HUD) definition of "homelessness" to verify that persons receiving Emergency Solutions Grant (ESG)-funded services live in a situation described by HUD as "homeless," and Front Steps also uses the federal definition of "chronically homeless" to determine if persons receiving ESG-funded services are classified as "chronically homeless." Front Steps documents clients' eligibility and classification using HUD's definitions on a "Homeless Eligibility Form" approved by the City of Austin. Front Steps is aware of continuing changes in the definition of chronic homelessness as a result of the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act and receives and discusses updates regularly at Continuum of Care (CoC) meetings within the community.

Compliance with APH Eligibility Criteria: The eligibility criteria for the program is homelessness, so the agency will ensure that all client files contain a Homeless Eligibility form and are entered into HMIS. Identity, residency, and income requirements, as well as annual recertification of homelessness are not required for shelter clients.

Program Services and Delivery

The City of Austin receives Emergency Solutions Grants (ESG) funds from the Department of Housing and Urban Development to provide Emergency Shelter at the Austin Resource Center for the Homeless. Eligible costs include: Maintenance, rent, security, fuel, equipment, insurance, utilities, food, furnishings, supplies necessary for shelter operation and hotel/motel vouchers. The City of Austin uses ESG funds for shelter maintenance, security staff, and food.

The City of Austin receives Emergency Solutions Grants (ESG) funds from the Department of Housing and Urban Development to provide Emergency Shelter at the Austin Resource Center for the Homeless. Eligible costs include: Maintenance, rent, security, fuel, equipment, insurance, utilities, food, furnishings, supplies necessary for shelter operation and hotel/motel vouchers. The City of Austin uses ESG funds for shelter maintenance, security staff, and food.

Emergency Night Shelter: The overnight shelter is available for single, adult men experiencing homelessness. There are 90 sleeping mats and 100 bunks for a total of 190 sleeping units. Front Steps serves dinner to all who utilize ENS. A light breakfast is available to all ARCH overnight clients, depending upon available funding.

Maintenance and Operations of the Austin Resource Center for the Homeless

Program Work Statement

Contract Term: 10/01/2018 - 09/30/2020
Program Period: 10/01/2019 - 09/30/2020

The City of Austin - Austin Public Health Department (APH) contracts with Front Steps to serve as the operator of the Austin Resource Center for the Homeless (ARCH), located at 500 East 7th Street, Austin, TX 78701.

As the operator of the ARCH, Front Steps is responsible for overall operations, maintenance, and oversight of the facility, as well as the activities located therein. Front Steps manages a preventative maintenance schedule and submits updated maintenance reports on a monthly to APH staff for review.

Front Steps is not responsible for managing the lease between the City of Austin and the Healthcare District for the operation of the Health Care for the Homeless ARCH CommUnityCare Clinic.

System for Collecting and Reporting Program Data

All program data will be collected and reported through the ARCH Agreement. Front Steps will provide required quarterly performance reporting, end of year reporting and a monthly "HMIS Data Quality Report" with each submitted pay request.

Performance Evaluation

Program Evaluation will be addressed in the ARCH Agreement.

Quality Improvement

Quality improvement systems will be addressed in the ARCH Agreement.

Service Coordination with Other Agencies

Front Steps will address service cooperation in the ARCH Agreement

Service Collaboration with Subgrantees

No collaborations are funded by this contract.

Community Planning Activities

Designated Front Steps' directors, managers and coordinators are members of the following ECHO committees and subcommittees: Executive, Membership, Program and Evaluation, HMIS, Continuum of Care, Veterans, Housing, and Education. Front Steps has participated in planning efforts regarding the City Council's efforts to create more affordable housing, the local 100,000 Homes Campaign, Ending Veteran Homelessness, Ending Youth Homelessness, Downtown Homeless Solutions, and other planning efforts. Front Steps also works collaboratively with the Downtown Austin Alliance, Sixth Street Association and Downtown Neighborhood Association on a variety of issues and initiatives such as the "I Live Here I Give Here" public education campaign that encourages people to give responsibly. In addition to these activities the Front Steps' Good Neighbor Program provides additional day resources to encourage those experiencing homelessness to utilize the ARCH during the day rather than panhandling and congregating in heavily trafficked downtown areas. Front Steps works closely with ECHO and other community partners in gathering public support of PSH and delivery of HUD-funded housing.

Program Budget and Narrative

Contract Term: 10/01/2018 - 09/30/2020

Program Period: 10/01/2019 - 09/30/2020

	City Funds	Other Funds	Total
Personnel			
Salaries	\$98,194.00	\$0.00	\$98,194.00
Fringe and Payroll Taxes	\$0.00	\$0.00	\$0.00
	\$98,194.00	\$0.00	\$98,194.00
Operations			
General Operations	\$98,950.00	\$0.00	\$98,950.00
Outsourced Professional Services	\$0.00	\$0.00	\$0.00
Supplemental Programmatic Services	\$0.00	\$0.00	\$0.00
Training/Travel Outside Austin and/or Travis County	\$0.00	\$0.00	\$0.00
	\$98,950.00	\$0.00	\$98,950.00
Assistance to Clients			
Rental/Mortgage Assistance	\$0.00	\$0.00	\$0.00
General Housing Assistance	\$0.00	\$0.00	\$0.00
Direct Client Assistance	\$0.00	\$0.00	\$0.00
Client Food and Beverage	\$116,778.00	\$0.00	\$116,778.00
	\$116,778.00	\$0.00	\$116,778.00
Capital Outlay			
Capital Outlay - \$5,000.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
Deliverables Amount			
Deliverables Amount	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
Subgrantees/Subrecipients			
Personnel-Sub	\$0.00	\$0.00	\$0.00
Operations-Sub	\$0.00	\$0.00	\$0.00
Direct Client Assistance-Sub	\$0.00	\$0.00	\$0.00
Other-Sub	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
Program Income			
Program Income (Zero dollars budgeted for monthly credit)	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
Other			
Other	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
Total	\$313,922.00	\$0.00	\$313,922.00

Program Budget and Narrative

Personnel

Maintenance staff for emergency shelter operations

Operations

Security Guards for Shelter

Assistance to Clients

Food for clients in the overnight shelter

Capital Outlay

Deliverables Amount

Program Subgrantees

Program Income

Other



CITY OF AUSTIN
Austin Public Health Department

EMERGENCY SOLUTIONS GRANT PROGRAM (ESG)
PROGRAM STANDARDS AND POLICIES AND PROCEDURES

Table of Contents

SECTION 1: ESG PROGRAM STANDARDS	2
I. Definitions	2
II. General	4
III. Eligible Organizations	4
IV. Ineligible Organizations	4
V. Financial Terms	5
VI. Matching Funds	5
VII. Eligible Activities	6
VIII. Client Eligibility	6
ESG Eligibility Documentation	6
Confidentiality of Client Information	6
IX. Emergency Shelter	7
X. Rapid Rehousing and Other ESG-funded Services	8
ESG Rapid Rehousing Financial Assistance Guidelines:	9
Short-term and medium-term rental assistance	9
XI. Coordination Between Service Providers	11
XII. Homeless Management Information System (HMIS)	12
SECTION 2: ESG POLICIES AND PROCEDURES	14
I. Grant Subaward Process	14
II. Contracting	14
III. Internal Controls	14
IV. Recordkeeping Requirements	15
V. Reporting Requirements	17
VI. Program Limitations	19
VII. Performance Standards	19
VIII. Accessibility	20

SECTION 1: ESG PROGRAM STANDARDS

I. Definitions

The Terms used herein will have the following meanings:

APH – Austin Public Health

At Risk of Homelessness-

- 1) An individual or family who:
 - a) Has an annual income below 30% of median family income for the area; AND
 - b) Does not have sufficient resources or support networks immediately available to prevent them from moving to an emergency shelter or another place defined in Category 1 of the “homeless” definition; AND one of the following conditions:
 - i. Has moved because of economic reasons 2 or more times during the 60 days immediately preceding the application for assistance; OR
 - ii. Is living in the home of another because of economic hardship; OR
 - iii. Has been notified that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance; OR
 - iv. Lives in a hotel or motel and the cost is not paid for by charitable organizations or by Federal, State, or local government programs for low-income individuals; OR
 - v. Lives in an SRO or efficiency apartment unit in which there reside more than 2 persons or lives in a larger housing unit in which there reside more than one and a half persons per room; OR
 - vi. Is exiting a publicly funded institution or system of care; OR
 - vii. Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient’s approved Consolidated Plan;
- 2) A child or youth who does not qualify as homeless under the homeless definition, but qualifies as homeless under another Federal statute; An unaccompanied youth who does not qualify as homeless under the homeless definition, but qualifies as homeless under section 725(2) of the McKinney-Vento Homeless Assistance Act, and the parent(s) or guardian(s) or that child or youth if living with him or her.

CDO- Community Development Officer;

Chronically Homeless means:

- 1) A “homeless individual or family with a disability,” as defined in section 401(9) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(9)), who:
 - a) Lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and
 - b) Has been homeless and living as described in paragraph (1)(i) of this definition continuously for at least 12 months or on at least 4 separate occasions in the last 3 years, as long as the combined occasions equal at least 12 months and each break in homelessness separating the occasions included at least 7 consecutive nights of not living as described in paragraph (1)(i). Stays in institutional care facilities for fewer than 90 days will not constitute as a break in homelessness, but rather such stays are included in the 12-month total, as long as the individual was living or residing in a place not

meant for human habitation, a safe haven, or an emergency shelter immediately before entering the institutional care facility;

- c) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or
- d) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) or (2) of this definition, including a family whose composition has fluctuated while the head of household has been homeless. (Updated 12-4-15)

City- City of Austin;

ESG- Emergency Solutions Grant program;

Homelessness is defined as:

- 1) Category 1 Literally Homeless - An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
 - a) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
 - b) An individual or family living in a supervised publicly or privately-operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or
 - c) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;
- 2) Category 2 Imminently Losing Primary Nighttime Residence - An individual or family who will imminently lose their primary nighttime residence, provided that:
 - a) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
 - b) No subsequent residence has been identified; and
 - c) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks needed to obtain other permanent housing;
- 3) Category 3 Persistent Housing Instability – People with all of the characteristics below:
 - a) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
 - b) Defined as homeless under other federal statutes (for example the definition used by the Department of Education) who do not otherwise qualify as homeless under HUD's definition;
 - c) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;
 - d) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

- e) Have one or more of the following: chronic disabilities, chronic physical or mental health conditions substance addiction histories of domestic violence or childhood abuse child with a disability two or more barriers to employment, which include - lack of a high school degree or GED - illiteracy - low English proficiency - history of incarceration or detention for criminal activity - history of unstable employment
- 4) Category 4 Fleeing/Attempting to Flee Domestic Violence: Any individual or family who:
 - a) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence
 - b) Has no other residence; and
 - c) Lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, to obtain other permanent housing

HUD- U.S. Department of Housing and Urban Development

NHCD- Neighborhood Housing and Community Development Office

Subrecipient- An organization receiving ESG funds from the City to undertake eligible ESG activities

II. General

The Emergency Solutions Grant Program (ESG), formerly known as the Emergency Shelter Grant Program, is funded through the City's Neighborhood Housing and Community Development Office (NHCD), which is made available by the U.S. Department of Housing and Urban Development (HUD). The City utilizes ESG funds to provide an array of services to assist homeless persons and persons at-risk of homelessness.

The ESG program is designed to be the first step in a continuum of assistance to help clients quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness.

The City's Austin Public Health Department is responsible for the implementation of ESG in compliance with the governing regulations of the ESG program. The City's Neighborhood Housing and Community Development Office (NHCD) is responsible for the planning and administration of the ESG program. The Community Development Officer (CDO) of NHCD has the authority to establish processes, procedures, and criteria for the implementation and operation of the program, and to waive compliance with any provision of these guidelines if s/he determines that to do so does not violate any Federal, state, or local law or regulation, and is in the best interest of the City. Nothing contained, stated, or implied in this document shall be construed to limit the authority of the City to administer and carry out the program by whatever means and in whatever manner it deems appropriate.

III. Eligible Organizations

The subrecipient must be a unit of local government or a private, non-profit organization, as defined by the Internal Revenue Service tax code, evidenced by having a Federal identification number, filed articles of incorporation, and written organizational by-laws.

IV. Ineligible Organizations

An organization will not be eligible to apply for ESG funds if it meets the following conditions:

- 1) Outstanding audit or monitoring findings, unless appropriately addressed by a corrective action plan;
- 2) Current appearance on the List of Suspended and Debarred Contractors
- 3) Terms and conditions of existing contract are not in full compliance;
- 4) History of non-performance with contracts.

V. Financial Terms

- 1) Grantee shall expend the City budget in a reasonable manner in relation to Agreement time elapsed and/or Agreement program service delivery schedule.
- 2) All grant funds allocated must be completely spent down within the 24-month allocation period.
- 3) If the Grantee has a remaining balance at the end of the first twelve-month period, the Grantee must submit a request to spend down remaining balance to the Assistant Director of the Austin Public Health, Health Equity Community Engagement Division (HECE).
- 4) If cumulative expenditures are not within acceptable amounts, spending rates, or in accordance with grant compliance the City may require the Grantee to:
 - a) submit an expenditure plan, and/or
 - b) amend the Agreement budget amount to reflect projected expenditures, as determined by the City.

In order to be eligible for services under the ESG program, clients must meet HUD's definition of homelessness or at-risk of homelessness, and must meet annual income guidelines for homelessness prevention activities.

VI. Matching Funds

Subrecipient organizations that receive ESG funds must provide a dollar for dollar (or 100%) match to their ESG award amount.

- 1) Sources of matching funds include:
 - a) Cash Contributions- Cash expended for allowable costs identified in 2 CFR Part 200. Program Income for the ESG program can also be used as match funds. Match funds are identified in 2CFR Part 200.306
 - b) Non-Cash Contributions- The value of any real property, equipment, goods, or services.
- 2) Funds used to match a previous ESG grant may not be used to match a subsequent award.
- 3) The following requirements apply to matching contributions from a Federal source of funds:
 - a. The recipient must ensure the laws governing any funds to be used as matching contributions do not prohibit those funds from being used to match Emergency Solutions Grant (ESG) funds.
 - b. If ESG funds are used to satisfy the matching requirements of another Federal program, then funding from that program may not be used to satisfy the matching requirements under this section.
 - c. Contributions that have been or will be counted as satisfying a matching requirement of another Federal grant or award may not count as satisfying the matching requirement
- 4) Costs paid by program income shall count toward meeting the recipient's matching requirements, provided the costs are eligible ESG costs that supplement the recipient's ESG program

VII. Eligible Activities

Each sub-recipient will be allocated funding by activity type, and may have multiple activities in one program. The following is a list of eligible activities for the ESG Program:

- 1) Street Outreach- Support services limited to providing emergency care on the streets, including engagement, case management, emergency health and mental health services, and transportation;
- 2) Emergency Shelter- Includes essential services, case management, child care, education, employment, outpatient health services legal services, life skills training, mental health & substance abuse services, transportation, shelter operations, and funding for hotel/motel stays under certain conditions;
- 3) Homeless Prevention- Includes housing relocation & stabilization services and short/medium-term rental assistance for individuals/families who are at risk of homelessness;
- 4) Rapid Re-Housing- Includes housing relocation & stabilization services and short/medium-term rental assistance to help individuals/families move quickly into permanent housing and achieve stability;
- 5) Homeless Management Information System (HMIS) costs; and
- 6) ESG Administration costs.

VIII. Client Eligibility

In order to be eligible for services under the ESG program, clients must meet HUD's definition of homelessness or at-risk of homelessness, and must meet annual income guidelines for homelessness prevention activities.

1) ESG Eligibility Documentation

- a) Homelessness Prevention: This program will not provide Homelessness Prevention Services.
- b) Rapid Re-Housing:
- c) Please refer to the *Homeless Eligibility Form* for more information on documenting homelessness for ESG clients.
- d) Sub-recipient agencies must collect the required supporting documentation requested in the *Homeless Eligibility Form* in order for clients to be considered eligible for services
- e) All eligibility and supporting documentation for Rapid Re-Housing clients must be maintained in each client's file
- f) Clients will be referred to ESG programs through the Coordinated Assessment or Coordinated Entry process.
- g) CDU-Specific Client Eligibility Requirements
 - i. Referral through Coordinated Assessment
 - ii. HIV Positive, homeless individuals
- h) DACC-Specific Eligibility Requirements
 - i. Referral through Coordinated Assessment
- i) Front Steps Specific Eligibility Requirements
 - i. Referral through Coordinated Assessment
 - ii. Targeted to those who sheltered at ARCH and coming from the streets outside the ARCH

2) Confidentiality of Client Information

- a) Subrecipients must have written client confidentiality procedures in their program policies and procedures that conform to items b – d below:

- b) All records containing personally identifying information of any individual or family who applies for and/or receives ESG assistance must be kept secure and confidential.
- c) The address or location of any domestic violence project assisted under ESG shall not be made public.
- d) The address or location of any housing for a program participant shall not be made public.

IX. Emergency Shelter

Requirement: Policies and procedures for admission, diversion, referral and discharge by emergency shelters assisted under ESG, including standards regarding length of stay, if any, and safeguards to meet the safety and shelter needs of special populations.

The ESG-funded emergency shelter, Austin Resource Center for the Homeless, or ARCH is currently limited to those clients in case-management, with 20 beds held open for Emergency Night Shelter for men. The ARCH provides Day Resource Center for enrolled clients. Case Management and other co-located services are provided on-site by the following local service providers.

Sleeping Unit Reservation System: Of the 150 sleeping units, approximately 130 are reserved for those clients in full-time case-management with the remaining 20 held open for Emergency Night Shelter.

There is no length of stay for the shelter, and in case management, the general length is 6 months with evaluation on a case by case basis. Clients are informed that if they have a reservation, but they do not arrive to check in, within a set number of days, their reserved place will be made available to other clients on the waiting list. There are also available beds in coordination with the following participating agencies: CommUnity Care Clinic, Veterans Administration (VA), and Austin/Travis County Integral Care, the local mental health authority. All of these case-managed clients work with their case manager to determine a housing plan and are connected to other resources to find permanent housing. The client is informed of the grievance process, and their end date for services determined on a case by case basis.

Clients are encouraged to work with Case Managers to progress towards personal goals related to obtaining/maintaining sustainable income, exploring viable housing options, and addressing self-care issues that impact progress towards self-sufficiency. Case Management services are based on a Harm Reduction philosophy and the stages in the Trans-theoretical Model of Change. Various techniques, including motivational interviewing, are effectively utilized in working with clients whose needs vary across a spectrum of vulnerability. Men's and women's support groups as well as anger management classes are offered through case management. ARCH clients with domestic violence concerns are offered coordination and referral to appropriate programs on a case by case basis.

Front Steps, the agency administering the ARCH, has been designated as one of the "front doors"/community portals in the Coordinated Assessment process. Using the Vulnerability Index & Service Prioritization Decision Assistance Tool (VI-SPDAT) as part of the Coordinated Assessment process, coupled with more robust data entry into HMIS, clients who score within range and are identified as likely benefitting from receiving Shelter Case Management services will be offered these services as openings in the program become available.

The following is provided in the case that a client is terminated:
Written notice to the participant containing a clear statement of the reason for termination.

A review of the decision, in which the participant is given the opportunity to present written or oral objections before a person other than the person(or subordinate of the person) who made or approved the termination decisions, AND
Prompt written notification to the program participant.

Because the ARCH is a City building, the agencies cannot deny citizens access to the shelter property on a permanent basis.

X. Rapid Rehousing and Other ESG-funded Services

There are no Street Outreach services funded by ESG.

There are no homeless prevention services funded by ESG.

Requirement: Policies and procedures for determining and prioritizing which eligible families and individuals will receive rapid re-housing assistance.

All programs funded through the Emergency Solutions Grant will use Coordinated Entry for referrals for the program in order to serve the most vulnerable Rapid Rehousing clients in the community. Agency eligibility could include, for example, HIV status for the Communicable Disease Unit. All programs help clients go through the Coordinated Entry process to access appropriate referrals and community programs.

Each client will be individually assessed for the amount of Rapid Rehousing using progressive engagement and housing first principles. If a client or family needs continued services and financial assistance past the initial date of entry into the program, agencies will work to address those needs until the client exits the program. Other funding sources will be used to address the other service needs of the client such as case management, housing location or financial and rental assistance as needed.

Requirement: *Standards for determining the type, amount and duration of housing stabilization and/or relocation services to provide a program participant, including the limits on rapid re-housing assistance.*

- 1) All Rapid Rehousing programs will include the following components:
 - a) Housing Stability Plan with Exit Strategy
 - b) Progressive Engagement
 - c) Coordination with other HUD funded programs and regular review the program's progress towards the HUD benchmarks:
 - i. Reducing the length of time program participants spend homeless;
 - ii. Exiting households to permanent housing, and
 - iii. Limiting returns to homelessness within a year of program exit.
- 2) Also, all RR programs will provide the following services with ESG funds or with another funding source. If the agency is not able to provide all of these services they will work with a collaborative partner to provide them.
 - a) Housing Location
 - b) Financial Assistance – Rental, Deposits, Application Fees, etc.
 - c) Housing Stability Case Management

3) ESG Rapid Rehousing Financial Assistance Guidelines:

- a) Security Deposits are available for no more than 2 months' rent.
- b) Last Month's Rent is only paid if the last month's rent is necessary for the participant to obtain housing, if it is paid at the same time as the security deposit and first month's rent, and does not exceed one month's rent.
- c) Utility Deposit, Payments and Arrears is paid if it is within 24 month limit, including up to 6 months of utility arrears, and if the utility account is in the name of the participant or if there is proof of responsibility, and is for eligible gas, electric, water and sewage.
- d) Caps on assistance by program:
 - a. Downtown Austin Community Court: Financial Assistance can include up to \$2300 a year in direct financial assistance for all eligible financial assistance and rental assistance funding, with a 24 month cap of \$4600.
 - b. Front Steps: None beyond the regulations above.
 - c. Communicable Disease Unit: Does not administer financial assistance and rental assistance.
- e) Changes in household composition. The limits on the assistance under this section apply to the total assistance an individual receives, either as an individual or as part of a family.
- f) Limit of months of assistance. No client may receive more than 24 months of assistance in a three-year period.
- g) Recertification. Clients will be recertified at least every twelve months to determine ongoing eligibility as per 576.401. Recertification will assess clients to see if they do not have an annual income that exceeds 30% AMI, AND lack sufficient resources and support networks to retain housing without ESG assistance.

Requirement: Standards for determining what percentage or amount of rent and utilities cost each program participant must pay while receiving rapid re-housing assistance.

Most clients receiving financial assistance through the Emergency Solutions Grant will have high housing barriers and will be highly vulnerable. Participants are not required to contribute a percentage of their income to rent or utilities, so there are no standards developed.

Requirement: Standards for determining how long a particular program participant will be provided with rental assistance.

1) Short-term and medium-term rental assistance

Short and medium term rental assistance can be provided to a program participant with up to 24 months of rental assistance during any 3-year period. This assistance may be short-term rental assistance, medium-term rental assistance, payment of rental arrears, or any combination of this assistance.

- a) Short and Medium Term Rental Assistance – Short-term rental assistance is assistance for up to 3 months of rent; Medium-term rental assistance is assistance for more than 3 months but not more than 24 months of rent; Rental assistance for this program will be tenant-based.
 - i. Rental Assistance use with other subsidies. Except for a one-time payment of rental arrears on the tenant's portion of the rental payment, rental assistance cannot be provided to a program participant who is receiving tenant-based rental assistance, or

- living in a housing unit receiving project-based rental assistance or operating assistance, through other public sources. Rental assistance may not be provided to a program participant who has been provided with replacement housing payments under the URA during the period of time covered by the URA payments.
- i. Fair Market Rent - Rental Assistance must only be provided if rent does not exceed Fair Market Rent and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.
 - ii. For purposes of calculating rent, the rent shall equal the sum of the total monthly rent for the unit, any fees required for occupancy under the lease (other than late fees and pet fees) and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.
 - iii. Rental assistance agreement. The recipient or subrecipient may make rental assistance payments only to an owner with whom the recipient or subrecipient has entered into a rental assistance agreement. The rental assistance agreement must set forth the terms under which rental assistance will be provided, including the requirements that apply under this section. The rental assistance agreement must provide that, during the term of the agreement, the owner must give the recipient or subrecipient a copy of any notice to the program participant to vacate the housing unit, or any complaint used under state or local law to commence an eviction action against the program participant.
 - iv. Late payments. The recipient or subrecipient must make timely payments to each owner in accordance with the rental assistance agreement. The rental assistance agreement must contain the same payment due date, grace period, and late payment penalty requirements as the program participant's lease. The recipient or subrecipient is solely responsible for paying late payment penalties that it incurs with non-ESG funds.
 - v. Lease. Each program participant receiving rental assistance must have a legally binding, written lease for the rental unit, unless the assistance is solely for rental arrears. The lease must be between the owner and the program participant. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance under paragraph (i) of this section, the lease must have an initial term of one year.
- b) Tenant-based rental assistance. Rental assistance for this program will be tenant-based, and all programs will provide the minimum amount of assistance needed for client to stabilize using the principles of Progressive Engagement.
- i. A program participant who receives tenant-based rental assistance may select a housing unit in which to live and may move to another unit or building and continue to receive rental assistance, as long as the program participant continues to meet the program requirements.
 - ii. The recipient may require that all program participants live within a particular area for the period in which the rental assistance is provided.
 - iii. The rental assistance agreement with the owner must terminate and no further rental assistance payments under that agreement may be made if:

- The program participant moves out of the housing unit for which the program participant has a lease;
 - The lease terminates and is not renewed; or
 - The program participant becomes ineligible to receive ESG rental assistance.
- c) Rental Arrears are paid if the client is assisted with one-time payment of up to 6 months of rental arrears, including any late fees on those arrears. A lease must be present in the file with the participant's name on the lease or a document of the rent payments/financial records, as well as Rent Reasonableness, Lead Based Paint and Habitability Standards forms. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance under paragraph (i) of this section, the lease must have an initial term of one year.
- d) Caps on assistance by program:
- i. Downtown Austin Community Court: Financial Assistance can include up to a year in direct financial assistance for all eligible financial assistance and rental assistance funding.
 - ii. Front Steps: None beyond the regulations above.
 - iii. Communicable Disease Unit: Does not administer financial assistance and rental assistance.
- e) All clients will be recertified at least every twelve months to determine ongoing eligibility as per 576.401. Recertification will assess clients to see if they do not have an annual income that exceeds 30% AMI, AND lack sufficient resources and support networks to retain housing without ESG assistance.

XI. Coordination Between Service Providers

The following list gives the types of service coordination activities to be undertaken for the ESG Program: Case management, permanent supportive housing, rapid re-housing and housing location and financial assistance.

Services will be coordinated between the downtown Austin Resource Center for the Homeless (ARCH), Downtown Austin Community Court, and in consultation with the local Continuum of Care as well as other service providers such as Austin Travis County Integral Care, Caritas of Austin, Salvation Army, Veterans Administration, Continuum of Care Permanent Supportive Housing programs and other appropriate federal, state and local service providers.

Agency	Case Management/ Supportive Services	Permanent Supportive Housing	Rapid Rehousing/ Housing Location	Direct Financial Assistance
Front Steps- PSH and Rapid Rehousing	X	X	X	X
Caritas of Austin	X	X	X	X

with CoC and City funding				
Downtown Austin Community Court	X		X	X
Communicable Disease Unit	X		X	
Other Continuum of Care programs	X	X		
City-funded Social Service Agencies	X	X	X	X

ESG Rapid Rehousing Program Design: All ESG Programs will have all components or coordinate with other funding sources or entities so that all needs of the Rapid Rehousing clients will be adequately addressed.

RR Agency	Case Management/ Supportive Services	Housing Location	Direct Financial Assistance	Rental Assistance
Front Steps	Front Steps	Front Steps	Front Steps HHSP and SSVF; BSS Plus	Front Steps HHSP and SSVF, BSS Plus
Communicable Disease Unit (CDU)	CDU	CDU/DACC ESG	DACC ESG	DACC ESG
Downtown Austin Community Court	DACC	DACC	DACC ESG	DACC ESG

XII. Homeless Management Information System (HMIS)

Organizations receiving funding from the City of Austin for homelessness prevention and homeless intervention services are required to utilize the Local Homeless Management Information System (HMIS) to track and report client information for individuals who are at risk of homelessness or who are homeless. A high level of data quality is required. All ESG-funded programs will also be working with the community's Coordinated Entry process.

ESG Specific Requirements Include:

- 1) Entering client data into HMIS as per the guidelines outlined in an agreement with ECHO HMIS and under the requirements of the Austin/Travis County HMIS Data Quality Assurance Plan.
- 2) ESG-funded programs will participate in the centralized or coordinated assessment system in HMIS, as required under § 576.400(d).
- 3) The ESG Rapid Rehousing program will accept referrals through Coordinated Entry.
- 4) Utilizing the ESG eligibility form to determine homeless eligibility.
- 5) Demographic data collected in the ESG Demographic Form
- 6) HUD 40118 form or other required form required for Emergency Solutions Grants

- 7) Submission of HUD reporting information for the Consolidated Plan, Action Plan and Consolidated Annual Performance and Evaluation Report (CAPER).
- 8) Participation in community homeless coordination and planning.
- 9) Other HMIS Requirements:
Organizations receiving funding from the City of Austin for homelessness prevention and homeless intervention services are required to utilize HMIS to track and report client information for individuals who are at risk of homelessness or who are homeless. A high level of data quality is required. The Ending Community Homelessness Coalition (ECHO) currently serves as the local HMIS administrator.

Section 2: ESG POLICIES AND PROCEDURES

Management and operation of approved projects is the responsibility of the Subrecipient. The Subrecipient is the entity that will receive the City contract. Therefore, the subrecipient has the overall responsibility of the project's successful completion.

I. Grant Subaward Process

At its discretion, the City may use a competitive Request for Application and comprehensive review process to award ESG funding to providers of services to homeless persons and persons at-risk of homelessness. Activities will be consistent with the City's Consolidated Plan, in compliance with local, state, and Federal requirements and the governing regulations for use of ESG funds, and in conformance with program standards. The City will enter into written agreements with selected Subrecipients and will work with Subrecipients to ensure that project costs are reasonable, appropriate, and necessary to accomplish the goals and objectives of the City's overall ESG Program. The subrecipient must be able to clearly demonstrate the benefits to be derived by the services provided to homeless individuals, and to low-to-moderate income families. Performance measures will be established in the contract. All ESG award decisions of the City are final.

II. Contracting

Subrecipients must enter into a written contract with the City for performance of the project activities. Once a contract is signed, the subrecipient will be held to all agreements therein.

- 1) Members of the Subrecipient organization, volunteers, residents, or subcontractors hired by the organization may carry out activities. Subrecipients must enter into a written contract with the subcontractors carrying out all or any part of an ESG project. All subcontractors must comply with the City and Federal procurement and contracting requirements.
- 2) All contracts are severable and may be canceled by the City for convenience. Project funding is subject to the availability of ESG funds and, if applicable, City Council approval.
- 3) Amendments - Any amendments to a contract must be mutually agreed upon by the Subrecipient and the City, *in writing*. Amendment requests initiated by the Subrecipient must clearly state the effective date of the amendment, in writing. Austin Public Health (APH) staff will determine if an amendment request is allowable. APH reserves the right to initiate amendments to the contract.
- 4) Liability - Subrecipients shall forward Certificates of Insurance to the Austin Public Health Department within 30 calendar days after notification of the award, unless otherwise specified. The City's Risk Management Department will review and approve the liability insurance requirements for each contract. Subrecipients must maintain current insurance coverage throughout the entire contract period, as well as for any subsequent amendments or contract extensions.

III. Internal Controls

Subrecipients must have policies and procedures in place to protect assets, create accurate and reliable financial reporting, maintain compliance with all applicable laws and regulations, and ensure that agency operations are effective and efficient. These Internal Controls should include, but are not limited to:

- 1) Information and documents required through the standard City Boilerplate
 - a. Business continuity/risk management plans

- b. Conflict of interest policy
- c. Whistleblower policy
- d. Financial management policy
- 2) Staff and Program evaluations
- 3) Maintaining annual income and expense budget reports to compare expected spending and revenue with actual spending and revenue
- 4) Information Technology controls
- 5) Written job descriptions to clearly define roles within the organization

IV. Recordkeeping Requirements

- 1) Project Records- The Subrecipient must manage their contract and maintain records in accordance with City and Federal policies and must be in accordance with sound business and financial management practices, which will be determined by the City. Record retention for all ESG records, including client information, is five years after the expenditure of contract funds.
- 2) Client Records- The Subrecipient must maintain the following types of client records to show evidence of services provided under the ESG program:
 - a) Client Eligibility records, including documentation of Homelessness, or At-Risk of Homelessness plus income eligibility and support documentation.
 - b) For Rapid Rehousing client files, a copy of the ESG Rapid Rehousing Client File Review checklist and Rapid Rehousing Financial Assistance Checklist should be placed at the beginning of the file and peer reviewed before any financial assistance is provided
 - c) Documentation of Continuum of Care centralized or coordinated assessment (for client intake)
 - d) Financial Assistance backup documentation required for each type of assistance outlined in the previous sections. Rental assistance agreements and payments, including security deposits, and all backup documentation required for each type of assistance outlined in the following sections.
- 3) Housing Financial Assistance
For eligible clients, financial assistance may be allocated for eligible expenses with the following requirements and limitations:
 - a) Rental application fees.
 - b) Security deposits. Equal to no more than 2 months' rent.
 - c) Last month's rent. If necessary to obtain housing for a program participant, the last month's rent may be paid from ESG funds to the owner of that housing at the time the owner is paid the security deposit and the first month's rent. This assistance must not exceed one month's rent and must be included in calculating the program participant's total rental assistance, which cannot exceed 24 months during any 3-year period.
 - d) Utility deposits.
 - e) Utility payments. Up to 24 months of utility payments per program participant, per service, including up to 6 months of utility payments in arrears, per service. A partial payment of a utility bill counts as one month. This assistance may only be provided if the program participant or a member of the same household has an account in his or her name with a utility company or proof of responsibility to make utility payments. Eligible utility services are gas, electric, water, and sewage. No program participant shall receive more than 24 months of utility assistance within any 3-year period.
 - f) Financial assistance cannot be provided to a program participant who is receiving the same type of assistance through other public sources.

- g) Short-Term and Medium-Term Rental Assistance. Up to 24 months of rental assistance during any 3-year period. This assistance may be short-term rental assistance, medium-term rental assistance, payment of rental arrears, or any combination of this assistance.
 - i. Short-term rental assistance is assistance for up to 3 months of rent.
 - ii. Medium-term rental assistance is assistance for more than 3 months but not more than 24 months of rent.
 - iii. Payment of rental arrears consists of a one-time payment for up to 6 months of rent in arrears, including any late fees on those arrears.
 - iv. Rental assistance may be tenant-based or project-based
- h) Rent Restrictions.
 - i. Rental assistance cannot be provided unless the rent does not exceed the Fair Market Rent (FMR) established by HUD, as provided under 24 CFR part 888, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.
 - ii. For purposes of calculating rent under this section, the rent shall equal the sum of the total monthly rent for the unit, any fees required for occupancy under the lease (other than late fees and pet fees) and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.
 - iii. Rental assistance agreement must state that rental assistance payments will be made only to a landlord or owner with whom the subrecipient has entered into a rental assistance agreement. The rental assistance agreement must set forth the terms under which rental assistance will be provided, including the requirements that apply under this section. The rental assistance agreement must provide that, during the term of the agreement, the landlord/owner must give Front Steps a copy of any notice to the program participant to vacate the housing unit, or any complaint used under state or local law to commence an eviction action against the program participant.
 - iv. Late payments. Subrecipients must make timely payments to each landlord/owner in accordance with the rental assistance agreement. The rental assistance agreement must contain the same payment due date, grace period, and late payment penalty requirements as the program participant's lease. The recipient or sub-recipient is solely responsible for paying late payment penalties that it incurs with non-ESG funds.
 - v. Lease. Each program participant receiving rental assistance must have a legally binding, written lease for the rental unit, unless the assistance is solely for rental arrears. The lease must be between the landlord/owner and the program participant. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance, the lease must have an initial term of one year.
- i) All City of Austin ESG-funded Rapid Re-Housing programs will include the following components:
 - i. • Housing Stability Plan with Exit Strategy
 - ii. Progressive Engagement

- iii. Coordination with other HUD-funded programs and regular review the program's progress towards the HUD benchmarks;
- iv. Reducing the length of time program participants spend homeless;
- v. Exiting households to permanent housing, and
- vi. Limiting returns to homelessness within a year of program exit.

j) All of the below items must be completed *before* financial assistance can be provided:

Forms Required
<i>Required for housing location, housing stability case management, financial assistance, rental assistance</i>
Habitability Standards
Lead Hazard Standards
Rent-Reasonableness
Peer Reviewed ESG Rapid Rehousing Client File Review
<i>Required for rental assistance – arrears and ongoing rent (in addition to the above forms)</i>
Lease in client's name or a document of the rent payments/financial records
Fair market rent calculation
Landlord Rental Agreement

V. Reporting Requirements

1) Monthly Claims Requests

Claims Requests must be submitted within fifteen (15) calendar days after the reporting month's end with backup uploaded to the City's online contract management system, which identify the allowable expenditures incurred under this contract. The backup should be uploaded with the Claims request and should include:

- a) Front Steps: General Ledger
- b) City Agreements: Grant Cost Report grant costs with appropriate backup from the Digital Express Reports (DXR)
- c) Rapid Rehousing Financial Assistance programs: backup documentation for all direct financial assistance including a Rapid Rehousing Financial Assistance Checklist to verify that all required forms and steps were completed before releasing financial assistance to clients.
- d) Current Month Matching Funds Statement must be submitted monthly in the City's online contract management system, along with the monthly Claims report. The contractor is required to expend and document Matching Funds against payments to be received under this Agreement. The Claim cannot be approved unless the Matching Funds statement is included.

- e) All monthly claims reports must include a copy of the HMIS Universal Data Elements quality report for the month requested with ratings of either “Excellent” or “Acceptable” – if data quality reports fall below minimum standards, payments may be withheld until reports improve to “Excellent” or “Acceptable” ratings

2) Quarterly Reporting

- a) Quarterly performance reports shall be submitted, in a format prescribed by the City, by the 15th calendar day of the month after the quarter end, which identify the activities accomplished under this contract.
- b) Other performance metrics may be required to align with HUD system-wide performance measures.
- c) ESG Demographic Report must be submitted within fifteen (15) calendar days after the end of the preceding quarter. The data from this report should be able to be extracted from HMIS. Sections 4-8 and 10 must be completed by all ESG programs that serve clients.
- d) Quarterly Claims Review – Quarterly, one Claim will be reviewed for complete documentation including but not limited to:
 - i. Timesheets
 - ii. Check stubs, copies of checks
 - iii. Client File Checklists
 - iv. Peer Reviewed Rapid Rehousing Client File Review Form showing that the required documentation for clients served were collected in the correct order
 - v. Client file documentation of eligibility and appropriate housing documentation
 - vi. If issues are found with the quarterly reviews, or if HUD deems it necessary, the Claims Review process will be conducted monthly rather than quarterly

3) Annual Close-Out Reporting

- a) The Federal ESG program year ends on September 30th. At completion of all activities, a Contract Closeout Report must be submitted within 30 days of the end of the contract. The subrecipient is required to supply such information, in such form and format as the City and HUD may require. All records and reports must be made available to any authorized City representative upon request and without prior notice.
- b) For contracts that contain renewal/extension options, an Annual Progress Report shall be completed using the City’s online contract management system by the Grantee and submitted to the City within 60 calendar days following the end of each Program Period identified in the Agreement Exhibits.
- c) For contracts that contain renewal/extension options, an Annual Progress Report shall be completed using the City’s online contract management system by the Grantee and submitted to the City within 60 calendar days following the end of each Program Period identified in Section 4.1.2 of the Contract boilerplate.
- d) For those Agreements that are ending, a Closeout Report shall be completed by the Grantee through the City’s online contract management system and submitted to the City within 30 calendar days following the expiration or termination of this Agreement. Any encumbrances of funds incurred prior to the date of termination of this Agreement shall be subject to verification by the City. Upon termination of this Agreement, any unused funds, unobligated funds, rebates, credits, or interest earned on funds received under this Agreement shall be returned to the City.

- e) The Closeout Report must contain all information that the City requires during the normal Contract Close-Out Report or, if the Contract is ongoing but the Program Period had ended, all of the information the City requires for their Contract Progress Report.
- f) All ESG Subrecipients must use HMIS to report on clients served by the ESG program.
- g) All ESG programs are required to submit end of year reporting according to HUD requirements. This may include:
 - i. providing reports in the contract database earlier than the normal fourth quarter deadline
 - ii. Running and submitting an HMIS report to the HUD database, SAGE.

VI. Program Limitations

- 1) ESG Administration costs are limited to 7.5% of the total ESG allocation.
- 2) ESG Street Outreach and Emergency Shelter costs are limited to the greater of: 60% of the City's 2011-12 ESG grant -or- the amount committed to emergency shelter for the City's 2010-11 ESG allocation.
- 3) Program Income - Income derived from any ESG activity must be recorded and reported to APH as program income. Such income may not be retained or disbursed by the subrecipient without written approval from APH and is subject to the same controls and conditions as the Subrecipient's grant allocation.
- 4) ESG funds may not be used for lobbying or for any activities designed to influence legislation at any government level.
- 5) A church or religious affiliated organization must show secularism when submitting an ESG application.
- 6) Any ESG funds that are unallocated after the funding cycle will be reprogrammed by APH. Contracts that show three (3) consecutive months of inactivity (as documented by monthly reports or non-submission of required reports) will be reviewed on a case-by-case basis, and may be irrevocably canceled.

VII. Performance Standards

ESG-funded programs will report into HMIS and have a high level of data quality specified in Section A. XII. Homeless Management Information Systems. HMIS data quality is reviewed quarterly by City staff. All data quality is reviewed by the ECHO HMIS Administrator.

Performance measures will be reviewed quarterly by Austin Public Health Department. Measures will also be reviewed annually by the local Continuum of Care decision-making body, ECHO, during the annual Consolidated Evaluation and Performance Report process.

VIII. Termination Procedures

The following is provided in the case that a client is terminated:

- 1) Written notice to the participant containing a clear statement of the reason for termination.
- 2) A review of the decision, in which the participant is given the opportunity to present written or oral objections before a person other than the person(or subordinate of the person) who made or approved the termination decisions, AND
- 3) Prompt written notification to the program participant.

IX. Accessibility

In order to demonstrate compliance with the Americans with Disabilities Act (ADA) and Section 504 requirements, the following statements must be added to all public notices, advertisements, program applications, program guidelines, program information brochures or packages, and any other material containing general information that is made available to participants, beneficiaries, applicants, or employees:

_____ (*insert the name of your organization*) as a subrecipient of the City of Austin is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please call _____ (*insert your organization's phone number*) (voice) or Relay Texas at 1-800-735-2989 (TDD) for assistance.

_____ (*insert the name of your organization*) como un subreceptor de la Ciudad de Austin se compromete a cumplir con el Decreto de los Americanos Incapacitados. Con solo solicitarlo se proveerán modificaciones e igual acceso a comunicaciones. Para información favor de llamar a _____ (*insert your organization's phone number*) (voz) o Relay Texas 1-800-735-2989 (TDD) para asistencia.



City of Austin Purchasing Office Note to File

REFERENCE CONTRACT: MA 4700 NG190000012 ***Front Steps, Inc.***

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure unless the expenditure falls within an exemption listed in Section 252.022.

The City has selected a vendor for contract award and declares the competitive solicitation procedures in Local Government Code Chapter 252.022 to be exempt for this procurement based on the exemption a(4) a procurement for personal, professional, or planning services. This exemption is based on the specialized nature of the services provided and the mental and intellectual nature of the services being purchased.



City of Austin Purchasing Office

Certificate of Exemption for Professional Services, Public Health and Safety or Other Exempt Purchase (Non-Competitive)

DATE: November 26, 2018

DEPT: Austin Public Health

TO: Purchasing Officer or Designee

FROM: Stephanie Hayden

PURCHASING POC: Shawn Willett

PHONE: 512-972-5010

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure unless the expenditure falls within an exemption listed in Section 252.022.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

The City has selected a vendor for contract award and declares the competitive solicitation procedures in Local Government Code Chapter 252.022 to be exempt for this procurement. This Certificate of Exemption is hereby executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.
2. Please check the criteria listed below that applies to this request:

- ☐ A procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of a municipality.
- ☐ A procurement necessary to preserve or protect the public health or safety of the municipality's residents.
- ☐ A procurement necessary because of unforeseen damage to public machinery, equipment, or other property.
- ☒ A procurement of personal, professional, or planning services
- ☐ Other exemption from Chapter 252.022: _____

Austin Public Health hereby designates that per Texas Local Government Code Chapter 252.022.a(4), agreements for social services are exempt from competition based on the specialized nature of the services provided and the mental and intellectual nature of the services being purchased. We are therefore requesting a blanket exemption for all such agreements.

Recommended
Certification

Originator

Date

Leslie Boyd

2-14-19

Approved
Certification

Department Director or designee

Date

Stephanie Hays

12/05/18

Assistant City Manager
or designee (procurement requiring Council approval)

Date

[Signature]

12/6/18

Purchasing Office
Review

Authorized Purchasing Office Staff

Date

[Signature]

02/21/19

Purchasing Office
Management Review

Purchasing Officer or designee
(procurement requiring Council approval)

Date

APH will complete the below information and include a copy with each agreement as applicable

Vendor Name:

Frant Steps, Inc.

Master Agreement Number:

4700 NG190000012

APH Confirming Signature & Date:

Signature

Vella Kaur

Date

2/14/19



Amendment No. 2
to
Agreement No. 4700 NG190000012
for
Social Services
between
FRONT STEPS, INC.
and the
CITY OF AUSTIN

***Emergency Solutions Grant- Shelter Operations
CFDA # 14.231***

- 1.0 The City of Austin and the Grantee hereby agree to the Agreement revisions listed below.
- 2.0 The total amount for this Amendment to the Agreement is ***Three Hundred Thirteen Thousand Nine Hundred Twenty Two dollars (\$313,922)***. The total Agreement amount is recapped below:

Term	Agreement Change Amount	Total Agreement Amount
Basic Term: (Oct. 1, 2018 – Sept. 30, 2019)	n/a	313,922
Amendment No. 1: Exercise Extension Option #1 (Oct. 1, 2019 – Sept. 30, 2020)	\$ 313,922	\$ 627,844
Amendment No. 2: Exercise Extension Option #2 (Oct. 1, 2020 – Sept. 30, 2021)	\$ 313,922	\$ 941,766

- 3.0 The following changes have been made to the original Agreement EXHIBITS:

Exhibit A.1 -- Program Work Statement is deleted in its entirety and replaced with a new **Exhibit A.1 -- Program Work Statement**. [Revised 10/16/2020]

Exhibit B.1 -- Program Budget and Narrative is deleted in its entirety and replaced with a new **Exhibit B.1 -- Program Budget and Narrative**. [Revised 10/16/2020]

Exhibit B.3 -- Compensation Terms is added to the agreement.

Exhibit C -- Equal Employment/Fair Housing Office/Non-Discrimination Certification is deleted in its entirety and replaced with a new **Exhibit C -- Equal Employment/Fair Housing Office/Non-Discrimination Certification, Israel Verification, and Conflicts of Interest** [Revised 4/13/2020]

Exhibit D -- Required ESG Program Forms are deleted in their entirety and replaced with new **Exhibit D -- Required ESG Program Forms** [Revised 10/16/2020]

- D.1 ESG Program Standards, Policies, and Procedures
- D.2 ESG Regulations (24 CFR Part 576)
- D.3 ESG Homeless Eligibility Form
- D.4 ESG Habitability Standards

Exhibit F -- Federal Award Identification is deleted in its entirety and replaced with a new **Exhibit F -- Federal Award Identification**. [Revised 10/16/2020]

- 4.0 The Terms and Conditions for this Agreement are deleted in their entirety and replaced with the following:

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Grantee.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Grantee is engaged to provide the services set forth in the attached Agreement Exhibits.

1.1.1 This Agreement entered into between the City and the Grantee is designated a Social Services REIMBURSABLE Agreement.

1.2 **Responsibilities of the Grantee.** The Grantee shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Agreement Exhibits. The Grantee shall assure that all Agreement provisions are met by any Subgrantee performing services for the Grantee.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Grantee's activities in completing the Program Work Statement. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Agreement, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Grantee, and shall approve all requests for payment, as appropriate. The City's Contract Manager shall give the Grantee timely feedback on the acceptability of progress and task reports. The Contract Manager's oversight of the Grantee's activities shall be for the City's benefit and shall not imply or create any partnership or joint venture as between the City and the Grantee.

1.4 **Designation of Key Personnel.** The City's Contract Manager for this Agreement, to the extent stated in the preceding Section 1.3, shall be responsible for oversight and monitoring of Grantee's performance under this Agreement as needed to represent the City's interest in the Grantee's performance.

1.4.1 The City's Contract Manager or designee:

- may meet with Grantee to discuss any operational issues or the status of the services or work to be performed; and
- shall promptly review all written reports submitted by Grantee, determine whether the reports comply with the terms of this Agreement, and give Grantee timely feedback on the adequacy of progress and task reports or necessary additional information.

1.4.2 Grantee's Contract Manager or designee, shall represent the Grantee with regard to performance of this Agreement and shall be the designated point of contact for the City's Contract Manager.

1.4.3 If either party replaces its Contract Manager, that party shall promptly send written notice of the change to the other party. The notice shall identify a qualified and competent replacement and provide contact information.

SECTION 2. TERM

2.1 **Term of Agreement.** The Agreement shall be extended for a term of 12 months beginning October 1, 2020 through September 30, 2021.

2.1.1 Upon expiration of the initial term or period of extension, the Grantee agrees to hold over under the terms and conditions of this Agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed upon in writing).

SECTION 3. PROGRAM WORK STATEMENT

3.1 **Grantee's Obligations.** The Grantee shall fully and timely provide all services described in the attached Agreement Exhibits in strict accordance with the terms, covenants, and conditions of the Agreement and all applicable federal, state, and local laws, rules, and regulations.

SECTION 4. COMPENSATION AND REPORTING

4.1 **Agreement Amount.** The Grantee acknowledges and agrees that, notwithstanding any other provision of this Agreement, the maximum amount payable by the City under this Agreement for the 12-month term shall not exceed the amount approved by City Council, which is **\$313,922 (Three Hundred Thirteen Thousand Nine Hundred Twenty Two dollars)**. Continuation of the Agreement beyond the 12 months is specifically contingent upon the availability and allocation of funding, and authorization by City Council. Additional compensation terms are included in Exhibit B.3.

4.2 **Reports.**

4.2.1 Grantee must submit a fully and accurately completed payment request to the City's Contract Manager using the City's contract management system by the deadline outlined in Exhibit B.3. Grantee must provide complete and accurate supporting documentation. Upon receipt and approval by the City of each complete and accurate payment request, the City shall process the payment to the Grantee in an amount equal to the City's payment obligations, subject to deduction for any unallowable costs.

4.2.2 Grantee shall submit a quarterly program performance report using the format and method specified by the City no later than 11:59 p.m. Central Standard Time (CST) 15 calendar days following each calendar quarter. If the 15th calendar day falls on a weekend or holiday, as outlined in Section 8.24, the deadline to submit the quarterly program performance report is extended to no later than 11:59 p.m. CST of the 1st weekday immediately following the weekend or holiday. Grantee shall provide complete and accurate supporting documentation upon request by City. Payment Requests will not be approved if any accurate and complete performance report, including any required documentation, is past due. Performance reports on a frequency other than quarterly may be required by the City based upon business needs.

4.2.3 An annual Contract Progress Report, using the forms in the City's contract management system, shall be completed by the Grantee and submitted to the City within 45 calendar days following the end of each Program Period.

4.2.4 A Contract Closeout Summary Report using the forms in the City's contract management system shall be completed by the Grantee and submitted to the City within 60 calendar days following the expiration or termination of this Agreement. Any encumbrances of funds incurred

prior to the date of termination of this Agreement shall be subject to verification by the City. Upon termination of this Agreement, any unused funds, unobligated funds, rebates, credits, or interest earned on funds received under this Agreement shall be returned to the City.

4.2.5 Grantee shall provide the City with a copy of the completed Agency Administration Profile (AAP) using the forms in the City's contract management system, and required AAP Attachments, including a copy of the Grantee's completed Internal Revenue Service Form 990 or 990EZ (Return of Organization Exempt from Income Tax) if applicable, for each calendar year to be due in conjunction with submission of the Grantee's annual financial audit report or financial review report as outlined in Section 4.5.4. If Grantee filed a Form 990 or Form 990EZ extension request, Grantee shall provide the City with a copy of that application of extension of time to file (IRS Form 2758) within 30 days of filing said form(s), and a copy of the final IRS Form 990 document(s) immediately upon completion.

4.2.5.1 Governmental Entities are not required to submit an Agency Administration Profile to the City under this Agreement.

4.2.6 Grantee shall provide other reports required by the City to document the effective and appropriate delivery of services as outlined under this Agreement as required by the City.

4.3 **Grantee Policies and Procedures.**

4.3.1 Grantee shall maintain written policies and procedures aligned with best practices and approved by its governing body and shall make copies of all policies and procedures available to the City upon request. At a minimum, written policies shall exist in the following areas: Financial Management; Subcontracting and/or Procurement; Equal Employment Opportunity; Personnel and Personnel Grievance; Nepotism; Non-Discrimination of Clients; Client Grievance; Drug Free Workplace; the Americans with Disabilities Act; Conflict of Interest; Whistleblower; and Criminal Background Checks.

4.3.2 Grantee shall provide the City with copies of revised Articles of Incorporation and Doing Business As (DBA) certificates (if applicable) within 14 calendar days of receipt of the notice of filing by the Secretary of State's office. Grantee shall provide the City with copies of revised By-Laws within 14 calendar days of their approval by the Grantee's governing body.

4.4 **Monitoring and Evaluation.**

4.4.1 Grantee agrees that the City or its designee may carry out monitoring and evaluation activities to ensure adherence by the Grantee and Subgrantees to the Program Work Statement, Program Performance Measures, and Program Budget, as well as other provisions of this Agreement. Grantee shall fully cooperate in any monitoring or review by the City and further agrees to designate a staff member to coordinate monitoring and evaluation activities.

4.4.2 The City expressly reserves the right to monitor client-level data related to services provided under this Agreement. If the Grantee asserts that client-level data is legally protected from disclosure to the City, a specific and valid legal reference to this assertion must be provided and is subject to acceptance by the City's Law Department.

4.4.3 Grantee shall provide the City with copies of all evaluation or monitoring reports received from other funding sources during the Agreement Term upon request following the receipt of the final report.

4.4.4 Grantee shall keep on file copies of all notices of Board of Directors meetings, Subcommittee or Advisory Board meetings, and copies of approved minutes of those meetings.

4.5 Financial Audit of Grantee.

4.5.1 Grantee shall annually contract with an independent auditor utilizing a Letter of Engagement to complete either a full financial audit or financial review. The auditor must be a Certified Public Accountant recognized by the regulatory authority of the State of Texas.

4.5.1.1 Governmental Entities are not required to submit a financial audit to the City under this Agreement.

4.5.2 In the event Grantee expends \$750,000 or more in a year in federal awards, Grantee shall have a single or program specific audit conducted in accordance with Chapter 200, Subpart F, of Title 2 of the Code of Federal Regulations as required by the Single Audit Act of 1984, as amended (Single Audit Act), and shall submit to the City a complete set of audited financial statements and the auditor's opinion and management letters in accordance with Chapter 200, Subpart F, of Title 2 of the Code of Federal Regulations and any guidance issued by the federal Office of Management and Budget covering Grantee's fiscal year until the end of the term of this Agreement.

4.5.3 If Grantee is not subject to the Single Audit Act, and expends \$750,000 or more during the Grantee's fiscal year, then Grantee shall have a full financial audit performed in accordance with Generally Accepted Auditing Standards (GAAS). If less than \$750,000 is expended, then a financial review is acceptable, pursuant to the requirements of this Agreement.

4.5.4 Grantee shall submit a complete financial audit report or financial review which has been presented and accepted by the Board of Directors, to include the original auditor Opinion Letter/Independent Auditor's Report within 270 calendar days of the end of Grantee's fiscal year, unless alternative arrangements are approved in writing by the City. The financial audit report or financial review report must include the Management Letter/Internal Controls Letter, if one was issued by the auditor.

4.5.5 Grantee shall submit an APH Board Certification Form that was signed and dated by the Grantee's Board Chair. The APH Board Certification Form confirms that the independent auditor presented the financial audit or financial review to the Grantee's Board or committee of the Board and that it was accepted by the Grantee's Board of Directors or a committee of the Board. The City will deem the financial audit report/financial review report incomplete if the Grantee fails to submit the Board Certification form, as required by this Section.

4.5.6 The inclusion of any Findings or a Going Concern Uncertainty, as defined by Chapter 200, Subpart F, of Title 2 of the Code of Federal Regulations and GAAS, in a Grantee's audit requires the creation and submission to the City of a corrective action plan formally approved by the Grantee's governing board. The plan must be submitted to the City within 60 days after the audit is submitted to the City. Failure to submit an adequate plan to the City may result in the immediate suspension of funding. If adequate improvement related to the audit findings is not documented within a reasonable period of time, the City may provide additional technical assistance, refer the Agreement to the City Auditor for analysis, or move to terminate the Agreement as specified in Section 5 of the Agreement.

4.5.7 The expiration or termination of this Agreement shall in no way relieve the Grantee of the audit requirement set forth in this Section.

4.5.8 Right To Audit By Office of City Auditor.

4.5.8.1 Grantee agrees that the representatives of the Office of the City Auditor, or other authorized representatives of the City, shall have access to, and the right to audit, examine, and copy any and all records of the Grantee related to the performance under

this Agreement during normal business hours (Monday – Friday, 8 am – 5 pm). In addition to any other rights of termination or suspension set forth herein, the City shall have the right to immediately suspend the Agreement, upon written notice to Grantee, if Grantee fails to cooperate with this audit provision. The Grantee shall retain all such records for a period of 5 years after the expiration or early termination of this Agreement or until all audit and litigation matters that the City has brought to the attention of the Grantee are resolved, whichever is longer. The Grantee agrees to refund to the City any overpayments disclosed by any such audit.

4.5.8.2 Grantee shall include this audit requirement in any subagreements entered into in connection with this Agreement.

SECTION 5. TERMINATION

5.1 **Right To Assurance.** Whenever one party to the Agreement in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

5.2 **Default.** The Grantee shall be in default under the Agreement if the Grantee (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) fails to provide adequate assurance of performance under the "Right to Assurance" paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Grantee's Offer, or in any report or deliverable required to be submitted by Grantee to the City.

5.3 **Termination For Cause.** In the event of a default by the Grantee, the City shall have the right to terminate the Agreement for cause, by written notice effective 10 calendar days, unless otherwise specified, after the date of such notice, unless the Grantee, within such 10 day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Grantee on probation for a specified period of time within which the Grantee must correct any non-compliance issues. Probation shall not normally be for a period of more than 9 months; however, it may be for a longer period, not to exceed 1 year depending on the circumstances. If the City determines the Grantee has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Grantee, the City may suspend or debar the Grantee in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Grantee from the City's vendor list for up to 5 years and any Offer submitted by the Grantee may be disqualified for up to 5 years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Grantee's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

5.4 **Termination Without Cause.** The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon 30 calendar-days prior written notice. Upon receipt of a notice of termination, the Grantee shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Grantee, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

5.5 **Fraud.** Fraudulent statements by the Grantee on any Offer or in any report or deliverable required to be submitted by the Grantee to the City shall be grounds for the termination of the Agreement for cause by the City and may result in legal action.

SECTION 6. OTHER DELIVERABLES

6.1 **Insurance.** The following insurance requirements apply:

6.1.1 **General Requirements**

6.1.1.1 The Grantee shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Agreement and during any warranty period.

6.1.1.2 The Grantee shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Agreement execution and within 14 calendar days after written request from the City.

6.1.1.3 The Grantee must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

6.1.1.4 The Grantee shall not commence work until the required insurance is obtained and has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Grantee hereunder and shall not be construed to be a limitation of liability on the part of the Grantee.

6.1.1.5 The Grantee must maintain and make available to the City, upon request, Certificates of Insurance for all Subgrantees.

6.1.1.6 The Grantee's and all Subgrantees' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

6.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the Grantee's email address, and shall be mailed to the following address:

City of Austin
Austin Public Health
ATTN: Social Services Contracts
P. O. Box 1088
Austin, Texas 78767

6.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Agreement, covering both the City and the Grantee, shall be considered primary coverage as applicable.

6.1.1.9 If insurance policies are not written for amounts specified, the Grantee shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

6.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

6.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Grantee.

6.1.1.12 The Grantee shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.

6.1.1.13 The Grantee shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

6.1.1.14 The Grantee shall endeavor to provide the City 30 calendar-days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.

6.1.2 **Specific Coverage Requirements.** The Grantee shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Agreement, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Grantee.

6.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000* for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

6.1.2.1.1 Blanket contractual liability coverage for liability assumed under the Agreement and all other Agreements related to the project

6.1.2.1.2 Independent Grantee's Coverage

6.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period

6.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage

6.1.2.1.5 Thirty (30) calendar-days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage

6.1.2.1.6 The "City of Austin" listed as an additional insured, Endorsement CG 2010, or equivalent coverage

6.1.2.1.7 If care of a child is provided outside the presence of a legal guardian or parent, Grantee shall provide coverage for sexual abuse and molestation for a minimum limit of \$500,000 per occurrence.

6.1.2.1.8 The policy shall be endorsed to cover injury to a child while the child is in the care of the Grantee or Subgrantee.

* Supplemental Insurance Requirement. If eldercare, childcare, or housing for clients is provided, the required limits shall be \$1,000,000 per occurrence.

6.1.2.2 Business Automobile Liability Insurance.

Minimum limits: \$500,000 combined single limit per occurrence for all owned, hired and non-owned autos

- a. a. If any form of transportation for clients is provided, coverage for all owned, non-owned, and hired vehicles shall be maintained with a combined single limit of \$1,000,000 per occurrence.
- b. If Grantee does not own any vehicles, a signed "Hired & Non-Owned Auto" Statement may be provided in conjunction with evidence of non-owned and hired Business Automobile Liability Insurance coverage.
- c. b. If no client transportation is provided but autos are used within the scope of work, and there are no agency owned vehicles, evidence of Personal Auto Policy coverage from each person using their auto may be provided. The following limits apply for personal auto insurance: \$100,000/\$300,000/\$100,000.

All policies shall contain the following endorsements:

- 6.1.2.2.1. Waiver of Subrogation, Endorsement CA 0444, or equivalent coverage
- 6.1.2.2.2. Thirty (30) calendar-days' Notice of Cancellation, Endorsement CA 0244, or equivalent coverage
- 6.1.2.2.3 The "City of Austin" listed as an additional insured, Endorsement CA 2048, or equivalent coverage

6.1.2.3 Worker's Compensation and Employers' Liability Insurance. Coverage is required of Grantees providing services on City owned or leased property, and shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

- 6.1.2.3.1 The Grantee's policy shall apply to the State of Texas
- 6.1.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage
- 6.1.2.3.3 Thirty (30) calendar-days' Notice of Cancellation, Form WC 420601, or equivalent coverage

6.1.2.4 Professional Liability Insurance.

6.1.2.4.1 Grantee shall provide coverage at a minimum limit of \$500,000 per claim to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

6.1.2.4.2 If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Agreement and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the Agreement.

6.1.2.5 **Blanket Crime Policy Insurance.** A Blanket Crime Policy shall be required with limits equal to or greater than the sum of all Agreement funds allocated annually by the City. Acceptance of alternative limits shall be approved by Risk Management.

6.1.2.6 **Directors and Officers Insurance.** Directors and Officers Insurance with a minimum of not less than \$1,000,000 per claim shall be in place for protection from claims arising out of negligent acts, errors or omissions for directors and officers while acting in their capacities as such. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The coverage shall be continuous for the duration of the Agreement and for not less than 24 months following the end of the Agreement. Coverage, including renewals, shall have the same retroactive date as the original policy applicable to the Agreement or evidence of prior acts or an extended reporting period acceptable to the City may be provided. The Grantee shall, on at least an annual basis, provide the City with a Certificate of Insurance as evidence of such insurance.

6.1.2.7 **Property Insurance.** If the Agreement provides funding for the purchase of property or equipment the Grantee shall provide evidence of all risk property insurance for a value equivalent to the replacement cost of the property or equipment.

6.1.2.8 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents, must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

6.1.2.9 **Certificate.** The following statement must be shown on the Certificate of Insurance.

"The City of Austin is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability, auto liability and workers compensation policies."

6.2 **Equal Opportunity.**

6.2.1 **Equal Employment Opportunity.** No Grantee or Grantee's agent shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Agreement awarded by the City unless the Grantee has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Grantee shall sign and return the Non-Discrimination Certification attached hereto as Exhibit C. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Agreement and the Grantee's suspension or debarment from participation on future City Agreements until deemed compliant with Chapter 5-4. Any Subgrantees used in the performance of this Agreement and paid with City funds must comply with the same nondiscrimination requirements as the Grantee.

6.2.2 **Americans with Disabilities Act (ADA) Compliance.** No Grantee, or Grantee's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

6.3 **Inspection of Premises.** The City has the right to enter Grantee's and Subgrantee's work facilities and premises during Grantee's regular work hours, and Grantee agrees to facilitate a review of the facilities upon reasonable request by the City.

6.4 **Rights to Proposal and Contractual Material.** All material submitted by the Grantee to the City shall become property of the City upon receipt. Any portions of such material claimed by the Grantee to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

6.5 **Publications.** All published material and written reports submitted under the Agreement must be originally developed material unless otherwise specifically provided in the Agreement. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 7. WARRANTIES

7.1 **Authority.** Each party warrants and represents to the other that the person signing this Agreement on its behalf is authorized to do so, that it has taken all action necessary to approve this Agreement, and that this Agreement is a lawful and binding obligation of the party.

7.2 **Performance Standards.** Grantee warrants and represents that all services provided under this Agreement shall be fully and timely performed in a good and workmanlike manner in accordance with generally accepted community standards and, if applicable, professional standards and practices. Grantee may not limit, exclude, or disclaim this warranty or any warranty implied by law, and any attempt to do so shall be without force or effect. If the Grantee is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Agreement from the Grantee, and purchase conforming services from other sources. In such event, the Grantee shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source. Grantee agrees to participate with City staff to update the performance measures.

SECTION 8. MISCELLANEOUS

8.1 **Criminal Background Checks.** Grantee and Subgrantee(s) agree to perform a criminal background check on individuals providing direct client services in programs designed for children under 18 years of age, seniors 55 years of age and older, or persons with Intellectual and Developmental Disabilities (IDD). Grantee shall not assign or allow an individual to provide direct client service in programs designed for children under 18 years of age, seniors 55 years of age and older, or persons with IDD if the individual would be barred from contact under the applicable program rules established by Title 40 of the Texas Administrative Code.

8.1.1 In accordance with the Grantee's personnel and records retention policies, the Grantee shall retain documentation that a criminal background check was completed.

8.2 **Compliance with Health, Safety, and Environmental Regulations.** The Grantee, its Subgrantees, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety

and Health Administration (OSHA), and those found in the Clean Air Act (42 U.S.C. 7401–7671q), the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387), and the Energy Policy and Conservation Act (42 U.S.C. 6201). In case of conflict, the most stringent safety requirement shall govern. The Grantee shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Grantee's obligations under this paragraph.

8.2.1 The Grantee or Subgrantee(s) seeking an exemption for a food enterprise permit fee must present this signed and executed social services Agreement upon request to the City.
(Source: City of Austin Ordinance 20051201-013)

8.3 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Grantee is observed performing in a manner that the City reasonably believes is in violation of federal, state, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Grantee will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Grantee shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

8.4 **Indemnity.**

8.4.1 Definitions:

8.4.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

8.4.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Grantee, their respective agents, officers, employees and Subgrantees; the officers, agents, and employees of such Subgrantees; and third parties); and/or;

8.4.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Grantee, the Grantee's Subgrantees, and third parties),

8.4.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

8.4.2 THE GRANTEE SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE GRANTEE, OR THE GRANTEE'S AGENTS, EMPLOYEES OR SUBGRANTEES, IN THE PERFORMANCE OF THE GRANTEE'S OBLIGATIONS UNDER THE AGREEMENT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE GRANTEE (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

8.5 **Claims.** If any claim, demand, suit, or other action is asserted against the Grantee which arises under or concerns the Agreement, or which could have a material adverse effect on the Grantee's ability to perform hereunder, the Grantee shall give written notice thereof to the City within 10 calendar days after receipt of notice by the Grantee. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be

delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

8.6 Business Continuity. Grantee warrants that it has adopted a business continuity plan that describes how Grantee will continue to provide services in the event of an emergency or other unforeseen event, and agrees to maintain the plan on file for review by the City. Grantee shall provide a copy of the plan to the City's Contract Manager upon request at any time during the term of this Agreement, and the requested information regarding the Business Continuity Plan shall appear in the annual AAP documentation.

8.6.1 Grantee agrees to participate in the City's Emergency Preparedness and Response Plan and other disaster planning processes. Grantee participation includes assisting the City to provide disaster response and recovery assistance to individuals and families impacted by manmade or natural disasters.

8.7 Notices. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Agreement shall be in writing and shall be deemed delivered 3 business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, email, or other commercially accepted means. Notices to the City and the Grantee shall be addressed as follows:

To the City:
City of Austin
Austin Public Health
Health Equity and Community
Engagement Division
ATTN: Adrienne Sturup,
Assistant Director
7201 Levander Loop, Bldg. E
Austin, TX 78702

To the Grantee:
Front Steps, Inc.

ATTN: Amy Temperly,
Interim Executive Director
500 E. 7th Street
Austin, TX 78701

With copy to:
City of Austin
Austin Public Health

ATTN: Stephanie Hayden,
Director
7201 Levander Loop, Bldg. E
Austin, TX 78702

8.8 Confidentiality. In order to provide the deliverables to the City, Grantee may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Grantee acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Grantee (including its employees, Subgrantees, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Grantee promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Grantee agrees to use protective measures no less stringent than the Grantee uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

8.9 Advertising. Where such action is appropriate as determined by the City, Grantee shall publicize the activities conducted by the Grantee under this Agreement. Any news release, sign, brochure, or other advertising medium including websites disseminating information prepared or distributed by or for the Grantee shall recognize the City as a funding source and include a statement that indicates that the information presented does not officially represent the opinion or policy position of the City.

8.10 **No Contingent Fees.** The Grantee warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Grantee for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Agreement without liability and to deduct from any amounts owed to the Grantee, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

8.11 **Gratuities.** The City may, by written notice to the Grantee, cancel the Agreement without liability if it is determined by the City that gratuities were offered or given by the Grantee or any agent or representative of the Grantee to any officer or employee of the City with a view toward securing the Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Agreement. In the event the Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Grantee in providing such gratuities.

8.12 **Prohibition Against Personal Interest in Agreements.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Agreement resulting from that solicitation. Any willful violation of this Section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Grantee shall render the Agreement voidable by the City.

8.13 **Independent Grantee.** The Agreement shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Grantee's services shall be those of an independent Grantee. The Grantee agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City.

8.14 **Assignment-Delegation.** The Agreement shall be binding upon and inure to the benefit of the City and the Grantee and their respective successors and assigns, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Grantee without the prior written consent of the City. Any attempted assignment or delegation by the Grantee shall be void unless made in conformity with this paragraph. The Agreement is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Agreement.

8.15 **Waiver.** No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Grantee or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

8.16 **Modifications.** The Agreement can be modified or amended only by a written, signed agreement by both parties. No pre-printed or similar terms on any Grantee invoice, order, or other document shall have any force or effect to change the terms, covenants, and conditions of the Agreement.

8.17 **Interpretation.** The Agreement is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent

of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control, unless otherwise defined in the Agreement.

8.18 Dispute Resolution.

8.18.1 If a dispute arises out of or relates to the Agreement, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, 1 senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

8.18.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Grantee agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or an Agreement interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Grantee will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

8.19 Minority and Women Owned Business Enterprise (MBE/WBE) Procurement Program

MBE/WBE goals do not apply to this Agreement.

8.20 Living Wage Policy (If Applicable)

The City's Living Wage Program applies to City expenditure and revenue generating non-construction contracts where all of the following apply:

- Contract is predominantly for non-construction services *performed on City Property or on City Vehicles*;
- Contract results from a formal competitive solicitation, procedurally compliant with section 252.021 of the Texas Local Government Code;
- Contract requires authorization by City Council in accordance with Article VII, Finance, Section 15 (Purchase Procedure) of the City Charter; and
- Directly assigned Contractor Employees of the Prime Contractor and all tiers of subcontracting.

8.20.1 The Grantee shall maintain throughout the term of the Agreement basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA).

8.20.2 The Grantee shall provide the Department's Contract Manager with the first invoice, individual Employee Certifications for all employees directly assigned to the Agreement. The City reserves the right to request individual Employee Certifications at any time during the Agreement

term. Employee Certifications shall be signed by each employee directly assigned to the Agreement. The Employee Certification form is available on-line at:
https://www.austintexas.gov/financeonline/vendor_connection/index.cfm.

8.20.3 Grantee shall submit employee certifications annually on the anniversary date of Agreement award with the respective invoice to verify that employees are paid the Living Wage throughout the term of the Agreement. The Employee Certification Forms shall be submitted for employees added to the Agreement and/or to report any employee changes as they occur.

8.20.4 The Department's Contract Manager will periodically review the employee data submitted by the Grantee to verify compliance with this Living Wage provision. The City retains the right to review employee records required in paragraph 8.20.1 above to verify compliance with this provision.

8.21 Subgrantees.

8.21.1 Work performed for the Grantee by a Subgrantee shall be pursuant to a written Agreement between the Grantee and Subgrantee. The terms of the Subagreement may not conflict with the terms of the Agreement, and shall contain provisions that:

8.21.1.1 require that all deliverables to be provided by the Subgrantee be provided in strict accordance with the provisions, specifications and terms of the Agreement. The City may require specific documentation to confirm Subgrantee compliance with all aspects of this Agreement.

8.21.1.2 prohibit the Subgrantee from further subcontracting any portion of the Agreement without the prior written consent of the City and the Grantee. The City may require, as a condition to such further subcontracting, that the Subgrantee post a payment bond in form, substance and amount acceptable to the City;

8.21.1.3 require Subgrantees to submit all requests for payment and applications for payments, including any claims for additional payments, damages or otherwise, to the Grantee in sufficient time to enable the Grantee to include the same with its invoice or application for payment to the City in accordance with the terms of the Agreement;

8.21.1.4 require that all Subgrantees obtain and maintain, throughout the term of their Subagreement, insurance in the type required by this Agreement, and in amounts appropriate for the amount of the Subagreement, with the City being a named insured as its interest shall appear;

8.21.1.5 require that the Subgrantees indemnify and hold the City harmless to the same extent as the Grantee is required to indemnify the City; and

8.21.1.6 maintain and make available to the City, upon request, Certificates of Insurance for all Subgrantees.

8.21.2 The Grantee shall be fully responsible to the City for all acts and omissions of the Subgrantees just as the Grantee is responsible for the Grantee's own acts and omissions. Nothing in the Agreement shall create for the benefit of any such Subgrantee any contractual relationship between the City and any such Subgrantee, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subgrantee except as may otherwise be required by law.

8.21.3 The Grantee shall pay each Subgrantee its appropriate share of payments made to the Grantee not later than 10 days after receipt of payment from the City.

8.22 **Jurisdiction and Venue.** The Agreement is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Agreement shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

8.23 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

8.24 **Holidays.** The following holidays are observed by the City:

<u>HOLIDAY</u>	<u>DATE OBSERVED</u>
New Year's Day	January 1
Martin Luther King, Jr's Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday.
If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

8.25 **Survivability of Obligations.** All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement.

8.26 **Non-Suspension or Debarment Certification.** The City is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from federal, state, or City Agreements. By accepting an Agreement with the City, the Grantee certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the Exclusions records at SAM.gov, the State of Texas, or the City of Austin.

8.27 **Public Information Act.** Grantee acknowledges that the City is required to comply with Chapter 552 of the Texas Government Code (Public Information Act). Under the Public Information Act, this Agreement and all related information within the City's possession or to which the City has access are presumed to be public and will be released unless the information is subject to an exception described in the Public Information Act.

8.28 HIPAA Standards. As applicable, Grantee and Subgrantees are required to develop and maintain administrative safeguards to ensure the confidentiality of all protected client information, for both electronic and non-electronic records, as established in the Health Insurance Portability and Accountability Act (HIPAA) Standards CFR 160 and 164, and to comply with all other applicable federal, state, and local laws and policies applicable to the confidentiality of protected client information. Grantee must maintain HIPAA-compliant Business Associate agreements with each entity with which it may share any protected client information.

8.28.1 Business Associate Agreement. If performance of this Agreement involves the use or disclosure of Protected Health Information (PHI), as that term is defined in 45 C.F.R. § 160.103, then Grantee acknowledges and agrees to comply with the terms and conditions contained in the Business Associate Agreement, attached as Exhibit E.

8.29 Political and Sectarian Activity. No portion of the funds received by the Grantee under this Agreement shall be used for any political activity (including, but not limited to, any activity to further the election or defeat of any candidate for public office) or any activity undertaken to influence the passage, defeat, or final content of legislation; or for any sectarian or religious purposes.

8.30 Culturally and Linguistically Appropriate Standards (CLAS). The City is committed to providing effective, equitable, understandable and respectful quality care and services that are responsive to diverse cultural beliefs and practices, preferred languages, health literacy, and other communication needs. This commitment applies to services provided directly by the City as well as services provided through its Grantees. Grantee and its Subgrantees agree to implement processes and services in a manner that is culturally and linguistically appropriate and competent. Guidance on adopting such standards and practices are available at the U.S. Department of Health and Human Services Office of Minority Health's website at:
<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=1&lvlid=6>

In some instances, failure to provide language assistance services may have the effect of discriminating against persons on the basis of their natural origin. Guidelines for serving individuals with Limited English Proficiency (LEP) are available at <https://www.lep.gov/faqs/faqs.html>

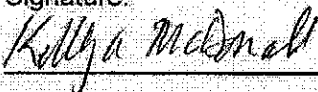
8.31 Entire Agreement. This Contract, together with the attached Exhibits, and any addenda and amendments thereto constitute the entire agreement between the parties, and this Contract shall not be modified, amended, altered, or changed except with the written consent of the parties.

5.0 By signing this Amendment, the Grantee certifies that the Grantee and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the Exclusion records found at SAM.gov, the State of Texas, or the City of Austin.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced Agreement.

GRANTEE

Signature:



Social Services Agreement Amendment

CITY OF AUSTIN

Signature:



FRONT STEPS, INC.
Kelly McDonald, Board President
500 E. 7th Street
Austin, TX 78701

City of Austin
Purchasing Office
PO Box 1088
Austin, TX 78767

Date: October 21, 2020

Date: 11/17/2020

DEFINITIONS

Agreement/Contract- General terms for a legally-binding undertaking between two parties that describes the terms, conditions, and specifications of the obligations, relationships, and responsibilities between them, and any related addenda and amendments. City of Austin Social Services Contracts are considered to be grant agreements, but commonly referred to as contracts. The terms are interchangeable throughout this Agreement.

Exhibit- An attachment to the agreement that is either programmatic (Program Exhibit) or contains additional terms and conditions (Standard Exhibit). Program Exhibits provide the detailed information for the program the City is funding through the Agreement.

Governmental Entity- An organization that is a unit of government, institution of higher education, or local taxing authority, such as a school district. Also includes quasi-governmental organizations, such as a local mental health authority.

Grantee- A vendor agency that has entered into a Social Services grant agreement with the City to provide social services to the community.

Reimbursable Agreement- An Agreement where an agency is reimbursed for expenses incurred and paid through the provision of adequate supporting documentation that verifies the expenses.

Subgrantee- An agency that has entered into a subagreement with a Grantee to provide direct client services under a Social Services Agreement, who is paid with City funds by the Grantee, and who must report program performance information to the Grantee for individuals served who are not existing clients of the Grantee for the contracted program. The Subgrantee is subject to the same terms and conditions in the Grantee's Social Services Agreement with the City.

Program Work Statement

Program Goals and Objectives

Based on the belief that all people deserve the dignity of a safe place to call home, Front Steps' mission is to provide a pathway home for our neighbors experiencing homelessness by offering emergency shelter, affordable housing, recuperative medical care, supportive services, and promote community awareness. Having this mission in mind, Front Steps manages the ARCH facility to serve multiple purposes, including: operating a safe and clean shelter that provides a respite from the elements, functioning as a place for clients to meet several of their basic needs, and serving as an entry portal to a variety of programs and services dedicated to assisting and empowering clients to achieve self-sufficiency and resolve their homelessness as rapidly as possible.

Program Clients Served

Front Steps uses the U.S. Department of Housing and Urban Development (HUD) definition of "homelessness" to verify that persons receiving Emergency Solutions Grant (ESG)-funded services live in a situation described by HUD as "homeless," and Front Steps also uses the federal definition of "chronically homeless" to determine if persons receiving ESG-funded services are classified as "chronically homeless." Front Steps documents clients' eligibility and classification using HUD's definitions on a "Homeless Eligibility Form" approved by the City of Austin. Front Steps is aware of continuing changes in the definition of chronic homelessness as a result of the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act and receives and discusses updates regularly at Continuum of Care (CoC) meetings within the community.

Compliance with APH Eligibility Criteria: The eligibility criteria for the program is homelessness, so the agency will ensure that all client files contain a Homeless Eligibility form and are entered into HMIS. Identity, residency, and income requirements, as well as annual recertification of homelessness are not required for shelter clients.

Program Services and Delivery

The City of Austin receives Emergency Solutions Grants (ESG) funds from the Department of Housing and Urban Development to provide Emergency Shelter at the Austin Resource Center for the Homeless. Eligible costs include: Maintenance, rent, security, fuel, equipment, insurance, utilities, food, furnishings, supplies necessary for shelter operation and hotel/motel vouchers. The City of Austin uses ESG funds for shelter maintenance, security staff, and food. Because of timeline considerations specific to grants, all claims will be due on the 15th of each month following the end of the month being reported on, if the 15th of the month falls on a weekend or holiday, the claim will be due on the first business day after the 15th.

Emergency Night Shelter: The overnight shelter is available for single, adult men experiencing homelessness. There are 90 sleeping mats and 100 bunks for a total of 190 sleeping units. Front Steps serves dinner to all who utilize ENS. A light breakfast is available to all ARCH overnight clients, depending upon available funding.

Maintenance and Operations of the Austin Resource Center for the Homeless

The City of Austin - Austin Public Health Department (APH) contracts with Front Steps to serve as the operator of the Austin Resource Center for the Homeless (ARCH), located at 500 East 7th Street, Austin, TX 78701.

Program Work Statement

As the operator of the ARCH, Front Steps is responsible for overall operations, maintenance, and oversight of the facility, as well as the activities located therein. Front Steps manages a preventative maintenance schedule and submits updated maintenance reports on a monthly to APH staff for review.

Front Steps is not responsible for managing the lease between the City of Austin and the Healthcare District for the operation of the Health Care for the Homeless ARCH CommUnityCare Clinic.

System for Collecting and Reporting Program Data

All program data will be collected and reported through the ARCH Agreement. Front Steps will provide required quarterly performance reporting, end of year reporting and a monthly "HMIS Data Quality Report" with each submitted pay request.

Performance Evaluation

Program Evaluation will be addressed in the ARCH Agreement.

Quality Improvement

Quality improvement systems will be addressed in the ARCH Agreement.

Service Coordination with Other Agencies

Front Steps will address service cooperation in the ARCH Agreement

Service Collaboration with Subgrantees

No collaborations are funded by this contract.

Community Planning Activities

Designated Front Steps' directors, managers and coordinators are members of the following ECHO committees and subcommittees: Executive, Membership, Program and Evaluation, HMIS, Continuum of Care, Veterans, Housing, and Education. Front Steps has participated in planning efforts regarding the City Council's efforts to create more affordable housing, the local 100,000 Homes Campaign, Ending Veteran Homelessness, Ending Youth Homelessness, Downtown Homeless Solutions, and other planning efforts. Front Steps also works collaboratively with the Downtown Austin Alliance, Sixth Street Association and Downtown Neighborhood Association on a variety of issues and initiatives such as the "I Live Here I Give Here" public education campaign that encourages people to give responsibly. In addition to these activities the Front Steps' Good Neighbor Program provides additional day resources to encourage those experiencing homelessness to utilize the ARCH during the day rather than panhandling and congregating in heavily trafficked downtown areas. Front Steps works closely with ECHO and other community partners in gathering public support of PSH and delivery of HUD-funded housing.

Program Budget and Narrative

Contract Term: 10/01/2018 - 09/30/2021

Program Period: 10/01/2020 - 09/30/2021

	City Funds	Other Funds	Total
Personnel			
Salaries	\$98,194.00	\$0.00	\$98,194.00
Fringe and Payroll Taxes	\$0.00	\$0.00	\$0.00
	\$98,194.00	\$0.00	\$98,194.00
Operations			
General Operations	\$130,342.00	\$0.00	\$130,342.00
Outsourced Professional Services	\$0.00	\$0.00	\$0.00
Supplemental Programmatic Services	\$0.00	\$0.00	\$0.00
Training/Travel Outside Austin and/or Travis County	\$0.00	\$0.00	\$0.00
	\$130,342.00	\$0.00	\$130,342.00
Assistance to Clients			
Rental/Mortgage Assistance	\$0.00	\$0.00	\$0.00
General Housing Assistance	\$0.00	\$0.00	\$0.00
Direct Client Assistance	\$0.00	\$0.00	\$0.00
Client Food and Beverage	\$85,386.00	\$0.00	\$85,386.00
	\$85,386.00	\$0.00	\$85,386.00
Capital Outlay			
Capital Outlay - \$5,000.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
Deliverables Amount			
Deliverables Amount	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
Subgrantees/Subrecipients			
Personnel-Sub	\$0.00	\$0.00	\$0.00
Operations-Sub	\$0.00	\$0.00	\$0.00
Direct Client Assistance-Sub	\$0.00	\$0.00	\$0.00
Other-Sub	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
Program Income			
Program Income (Zero dollars budgeted for monthly credit)	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
Other			
Other	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
Total	\$313,922.00	\$0.00	\$313,922.00

Program Budget and Narrative

Personnel

Maintenance staff for emergency shelter operations

Operations

Security Guards for Shelter

Assistance to Clients

Food for clients in the overnight shelter

Capital Outlay

Deliverables Amount

Program Subgrantees

Program Income

Other



City of Austin

Social Services Compensation Terms

1. The Grantee shall expend City funds according to the approved budget categories described in Exhibit B.1, Program Budget and Narrative, or Exhibit A.1, Program Work Statement (Deliverables), as applicable.

2. **Request for Payment**

Payment to the Grantee shall be due 30 calendar days following receipt by the City of the Grantee's fully and accurately completed payment request, using the City's contract management system. The payment request must be submitted to the City no later than 11:59 p.m. Central Standard Time 25 calendar days following the end of the month covered by the payment request. **If the 25th calendar day falls on a weekend or holiday, as outlined in Section 8.24, the deadline to submit the payment request is extended to no later than 11:59 p.m. Central Standard Time of the 1st weekday immediately following the weekend or holiday.**

3. **Documentation**

3.1. **FOR DELIVERABLE AGREEMENTS:** Grantee must provide the City with supporting documentation as described in Exhibit A.1, Program Work Statement (Deliverables) for each monthly Payment Request where an agreement deliverable is being submitted.

3.2. **FOR REIMBURSEABLE AGREEMENTS:** Grantee must provide the City with supporting documentation for each monthly payment request which includes, but is not limited to, a report of City Agreement expenditures generated from the Grantee's financial management system.

3.2.1. Appropriate supporting documentation includes:

- General Ledger Detail report from the Grantee's financial management system
- Transaction Detail by Account Report from the Grantee's financial management system
- Other reports that meet all of the following specifications:
 - produced from the Grantee's accounting system with no manual changes or adjustments
 - submitted in PDF format
 - includes date the report was created
 - demonstrates specific expenses for which reimbursement is being requested
 - demonstrates that City of Austin funds are maintained in a separate numbered bank account or standalone general operating account that includes only City expenses and reimbursements.

4. **Right of Final Approval.**

The City retains right of final approval of any supporting documentation submitted before a payment request is approved for processing. Failure to provide supporting documentation acceptable to the City may result in delay or rejection of the payment request. The City reserves the right to modify the required supporting documentation, as needed.

4.1 Unless otherwise expressly authorized in the Agreement, the Grantee shall pass through all Subagreement and other authorized expenses at actual cost without markup.

4.2 Federal excise taxes, state taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

5. Payment.

5.1 All requests accepted and approved for payment by the City will be paid within 30 calendar days of the City's receipt of the deliverables or of the invoice, whichever is later. Requests for payment received without the information required in Section 3 cannot be processed, will be returned to the Grantee, and City will make no payment in connection with such request.

5.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until 10 calendar days after the grounds for withholding payment have been resolved.

5.3 The City may withhold or set off the entire payment or part of any payment otherwise due the Grantee to such extent as may be necessary on account of;

5.3.1 delivery of unsatisfactory services by the Grantee;

5.3.2 third party claims, which are not covered by the insurance which the Grantee is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

5.3.3 failure of the Grantee to pay Subgrantees, or for labor, materials or equipment,

5.3.4 damage to the property of the City or the City's agents, employees or Grantees, which is not covered by insurance required to be provided by the Grantee;

5.3.5 reasonable evidence that the Grantee's obligations will not be completed within the time specified in the Agreement, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

5.3.6 failure of the Grantee to submit proper payment requests with all required attachments and supporting documentation;

5.3.7 failure of the Grantee to comply with any material provision of the Agreement; or

5.3.8 identification of previously reimbursed expenses determined to be unallowable after payment was made.

5.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City. Payment will be made by check unless the parties mutually agree to payment by electronic transfer of funds.

6. Non-Appropriation. The awarding or continuation of this Agreement is dependent upon the availability of funding and authorization by Council. The City's payment obligations are payable only and solely from funds appropriated and available for this Agreement. The absence of appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not appropriated or available and any deliverables delivered but unpaid shall be returned to the Grantee. The City shall provide the Grantee written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Agreement. In the event of non- or inadequate appropriation of funds, there will be no penalty or removal fees charged to the City.

7. **Travel Expenses** All approved travel, lodging, and per diem expenses in connection with the Agreement for which reimbursement may be claimed by the Grantee under the terms of the Agreement will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (Rates) as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. No reimbursement will be made for expenses not actually incurred. Airline fares other than coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

8. **Final Payment and Close-Out**

8.2 The making and acceptance of final payment will constitute:

8.2.1 a waiver of all claims by the City against the Grantee, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Grantee to comply with the Agreement or the terms of any warranty specified herein, regardless of when the cause for a claim is discovered (4) arising from the Grantee's continuing obligations under the Agreement, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

8.2.2 a waiver of all claims by the Grantee against the City other than those previously asserted in writing and not yet settled.

9. **Financial Terms**

9.2 The City agrees to pay Grantee for services rendered under this Agreement and to reimburse Grantee for actual, eligible expenses incurred and paid in accordance with all terms and conditions of this Agreement. The City shall not be liable to Grantee for any costs incurred by Grantee which are not reimbursable as set forth in Section 10 of this Exhibit.

9.3 The City's obligation to pay is subject to the timely receipt of complete and accurate reports as set forth in Section 3 of the Agreement, and any other deliverable required under this Agreement.

9.4 Payments to the Grantee will immediately be suspended upon the occasion of any late, incomplete, or inaccurate report, audit, or other required report or deliverable under this Agreement, and payments will not be resumed until the Grantee is in full compliance.

9.5 The City shall not be liable to Grantee for any costs which have been paid under other agreements or from other funds. In addition, the City shall not be liable for any costs incurred by Grantee which were: a) incurred prior to the effective date of this Agreement or outside the Agreement period as referenced in Section 2.1, or b) not billed to the City within 5 business days before the due date for the Grantee's annual Contract Progress Report or Contract Closeout Summary Report, whichever is applicable.

9.6 Grantee agrees to refund to the City any funds paid under this Agreement which the City determines have resulted in overpayment to Grantee or which the City determines have not been spent by Grantee in accordance with the terms of this Agreement. Refunds shall be made by Grantee within 30 calendar days after a written refund request is submitted by the City. The City may, at its discretion, offset refunds due from any payment due Grantee, and the City may also deduct any loss, cost, or expense caused by Grantee from funds otherwise due.

9.7 Grantee shall deposit and maintain all funds received under this Agreement in either a separate numbered bank account or a general operating account, either of which shall be supported with

the maintenance of a separate accounting with a specific chart which reflects specific revenues and expenditures for the monies received under this Agreement. The Grantee's accounting system must identify the specific expenditures, or portions of expenditures, against which funds under this Agreement are disbursed. Grantee must be able to produce an accounting system-generated report of exact expenses or portions of expenses charged to the City for any given time period.

- 9.8 Grantee is required to utilize an online Agreement management system for billing and reporting in accordance with the City's guidelines, policies, and procedures. Grantee is responsible for all data entered/edited under its unique username, as well as all required but omitted data.
- 9.9 Grantee shall expend the City budget in a reasonable manner in relation to Agreement time elapsed and/or Agreement program service delivery schedule. If cumulative expenditures are not within acceptable amounts, the City may require the Grantee to: 1) submit an expenditure plan, and/or 2) amend the Agreement budget amount to reflect projected expenditures, as determined by the City.

10. Allowable and Unallowable Costs

The City shall make the final determination of whether a cost is allowable or unallowable under this Agreement.

- 10.1 Reimbursement Only. Expenses and/or expenditures shall be considered reimbursable only if incurred during the current Program Period identified in the attached Program Exhibits, directly and specifically in the performance of this Agreement, and in conformance with the Agreement Exhibits. Grantee agrees that, unless otherwise specifically provided for in this Agreement, payment by the City under the terms of this Agreement is made on a reimbursement basis only; Grantee must have incurred and paid costs prior to those costs being invoiced and considered allowable under this Agreement and subject to payment by the City. Expenses incurred during the Program Period may be paid up to 30 days after the end of the Program Period and included in the Final Payment Request for the Program Period, which shall be due no later than 11:59 p.m. CST 5 calendar days before the due date for the Grantee's annual Contract Progress Report or Contract Closeout Summary Report, whichever is applicable.

- 10.1.1 To be allowable under this Agreement, a cost must meet all of the following general criteria:

- Be reasonable for the performance of the activity under the Agreement
- Conform to any limitations or exclusions set forth in this Agreement
- Be consistent with policies and procedures that apply uniformly to both government- financed and other activities of the organization
- Be determined and accounted in accordance with generally accepted accounting principles (GAAP)
- Be adequately documented

- 10.2 The City's prior written authorization is required in order for the following to be considered allowable costs. Inclusion in the budget within this Agreement constitutes "written authorization." The item shall be specifically identified in the budget. The City shall have the authority to make the final determination as to whether an expense is an allowable cost.

1. Alteration, construction, or relocation of facilities;
2. Cash payments, including cash equivalent gift cards such as Visa, MasterCard, and American Express;
3. Equipment and other capital expenditures;

4. Interest, other than mortgage interest as part of a pre-approved budget under this Agreement;
5. Organization costs (costs in connection with the establishment or reorganization of an organization);
6. Purchases of tangible, nonexpendable property, including fax machines, stereo systems, cameras, video recorder/players, microcomputers, software, printers, microscopes, oscilloscopes, centrifuges, balances and incubator, or any other item having a useful life of more than one year and an acquisition cost, including freight, of over \$5,000;
7. Selling and marketing; or
8. Travel/training outside Travis County.

10.3 The following types of expenses are specifically **not allowable** with City funds under this Agreement. The City shall have the authority to make the final determination as to whether an expense is an allowable cost.

1. Alcoholic beverages;
2. Bad debts;
3. Compensation of trustees, directors, officers, or advisory board members, other than those acting in an executive capacity;
4. Contingency provisions (funds) (*Self-insurance reserves and pension funds are allowable*);
5. Defense and prosecution of criminal and civil proceedings, claims, appeals, and patent infringement;
6. Deferred costs;
7. Depreciation;
8. Donations and contributions, including donated goods or space;
9. Entertainment costs, other than expenses related to client incentives;
10. Fines and penalties (including late fees);
11. Fundraising and development costs;
12. Goods or services for officers' or employees' personal use;
13. Housing and personal living expenses for organization's officers or employees;
14. Idle facilities and idle capacity;
15. Litigation-related expenses (including personnel costs) in action(s) naming the City as a Defendant;
16. Lobbying or other expenses related to political activity;
17. Losses on other agreements or casualty losses;
18. Public relations costs, except reasonable, pre-approved advertising costs related directly to services provided under this Agreement;
19. Taxes, other than payroll and other personnel-related levies; or
20. Travel outside of the United States of America.

11. Ownership of Property.

11.1 Ownership title to all capital acquisition, supplies, materials or any other property purchased with funds received under this Agreement and in accordance with the provisions of the Agreement, purchased with City funds shall convey to the Grantee 2 years after purchase, unless notified by the City in writing.

11.1.1 If the services funded by this Agreement are provided in a facility owned by the City or leased from the Travis County, , ownership title to all capital acquisition, supplies, materials or any other property purchased with funds received under this Agreement shall remain with the City.

11.2 Written notification must be given to the City within 5 calendar days of delivery of nonexpendable property (defined as anything that has a life or utility of more than 1 year and an acquisition cost, including freight, of over \$5,000) in order for the City to effect identification and recording for inventory purposes. Grantee shall maintain adequate accountability and control over such property, maintain adequate property records, perform an annual physical inventory of all such property, and report this information in the Annual Agreement Progress Report, due as indicated in Section 4.2.3 of the Agreement, as well as in the Agreement Closeout Summary Report, as indicated in Section 4.2.4 of the Agreement.

11.3 In the event Grantee's services are retained under a subsequent agreement, and should Grantee satisfactorily perform its obligations under this Agreement, Grantee shall be able to retain possession of non-expendable property purchased under this Agreement for the duration of the subsequent agreement.

City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION,
ISRAEL VERIFICATION, INTERESTED PARTIES, CONFLICTS OF INTEREST

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer,

demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 26th day of October, 2020

CONTRACTOR

Authorized
Signature

Title

Front Steps, Inc.



Director of Development
and Communications

PROHIBITION OF BOYCOTT OF ISRAEL VERIFICATION

Pursuant to Texas Government Code §2271.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this Contract:

- A. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code §2271.001.
- B. If the Grantee qualifies as a "company", then the Principal Artist verifies that he:
 - i. does not "boycott Israel"; and
 - ii. will not "boycott Israel" during the term of this Contract.
- C. The Grantee's obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2271 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

A COURT OF COMPETENT JURISDICTION HAS RECENTLY ENJOINED THE ABOVE STATE LAW. HOWEVER, IF THIS INJUNCTION IS LIFTED OR STAYED BY A COURT OR OTHER ENTITY OF COMPETENT JURISDICTION, THIS SECTION WILL BE AN ENFORCEABLE AND REQUIRED TERM OF YOUR CONTRACT WITH THE CITY. IF YOU DISAGREE WITH THE ABOVE SECTION OF THE CONTRACT, PLEASE STRIKE THROUGH IT OR INDICATE YOUR OBJECTION IN THE EXCEPTIONS SECTION. YOUR CONTRACT WILL NOT BE AFFECTED BY STRIKING THROUGH THIS PROVISION, AT THIS TIME.

INTERESTED PARTIES DISCLOSURE (FORM 1295)

As a condition to entering the Contract, the Business Entity constituting the Grantee must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring City Council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will verify the "Certificate of Interested Parties" with the Texas Ethics Commission prior to execution of the Agreement. The Grantee is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

CHAPTER 176 CONFLICT OF INTEREST DISCLOSURE

In accordance with Chapter 176 of the Texas Local Government Code, Grantee must file a Conflict of Interest Questionnaire (Questionnaire) with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7th) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City, and update the questionnaire not later than seven (7) business days after becoming aware of an event that would make a statement in the questionnaire incomplete or inaccurate. Grantee has a continuing obligation to file the Questionnaire in accordance with the requirements of Chapter 176 of the Texas Local Government Code once it becomes aware of a need to do so. The Questionnaire is available on line at the following website for the City Clerk:

<http://www.austintexas.gov/departments/conflict-interest-questionnaire>

There are statutory penalties for failure to comply with Chapter 176.



CITY OF AUSTIN
Austin Public Health Department

EMERGENCY SOLUTIONS GRANT PROGRAM (ESG)
PROGRAM STANDARDS AND POLICIES AND PROCEDURES

Table of Contents

SECTION 1: ESG PROGRAM STANDARDS	2
I. Definitions	2
II. General.....	4
III. Eligible Organizations	4
IV. Ineligible Organizations.....	4
V. Financial Terms	5
VI. Matching Funds	5
VII. Eligible Activities	6
VIII. Client Eligibility	6
ESG Eligibility Documentation.....	6
Confidentiality of Client Information.....	6
IX. Emergency Shelter.....	7
X. Rapid Rehousing and Other ESG-funded Services	8
ESG Rapid Rehousing Financial Assistance Guidelines:.....	9
Short-term and medium-term rental assistance	9
XI. Coordination Between Service Providers	11
XII. Homeless Management Information System (HMIS)	12
SECTION 2: ESG POLICIES AND PROCEDURES	14
I. Grant Subaward Process	14
II. Contracting	14
III. Internal Controls	14
IV. Recordkeeping Requirements	15
V. Reporting Requirements	17
VI. Program Limitations	19
VII. Performance Standards	19
VIII. Accessibility	20

SECTION 1: ESG PROGRAM STANDARDS

I. Definitions

The Terms used herein will have the following meanings:

APH – Austin Public Health

At Risk of Homelessness-

- 1) An individual or family who:
 - a) Has an annual income below 30% of median family income for the area; AND
 - b) Does not have sufficient resources or support networks immediately available to prevent them from moving to an emergency shelter or another place defined in Category 1 of the “homeless” definition; AND one of the following conditions:
 - i. Has moved because of economic reasons 2 or more times during the 60 days immediately preceding the application for assistance; OR
 - ii. Is living in the home of another because of economic hardship; OR
 - iii. Has been notified that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance; OR
 - iv. Lives in a hotel or motel and the cost is not paid for by charitable organizations or by Federal, State, or local government programs for low-income individuals; OR
 - v. Lives in an SRO or efficiency apartment unit in which there reside more than 2 persons or lives in a larger housing unit in which there reside more than one and a half persons per room; OR
 - vi. Is exiting a publicly funded institution or system of care; OR
 - vii. Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient’s approved Consolidated Plan;
- 2) A child or youth who does not qualify as homeless under the homeless definition, but qualifies as homeless under another Federal statute; An unaccompanied youth who does not qualify as homeless under the homeless definition, but qualifies as homeless under section 725(2) of the McKinney-Vento Homeless Assistance Act, and the parent(s) or guardian(s) or that child or youth if living with him or her.

CDO- Community Development Officer;

Chronically Homeless means:

- 1) A “homeless individual or family with a disability,” as defined in section 401(9) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(9)), who:
 - a) Lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and
 - b) Has been homeless and living as described in paragraph (1)(i) of this definition continuously for at least 12 months or on at least 4 separate occasions in the last 3 years, as long as the combined occasions equal at least 12 months and each break in homelessness separating the occasions included at least 7 consecutive nights of not living as described in paragraph (1)(i). Stays in institutional care facilities for fewer than 90 days will not constitute as a break in homelessness, but rather such stays are included in the 12-month total, as long as the individual was living or residing in a place not

meant for human habitation, a safe haven, or an emergency shelter immediately before entering the institutional care facility;

- c) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or
- d) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) or (2) of this definition, including a family whose composition has fluctuated while the head of household has been homeless. (Updated 12-4-15)

City- City of Austin;

ESG- Emergency Solutions Grant program;

Homelessness is defined as:

- 1) Category 1 Literally Homeless - An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
 - a) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
 - b) An individual or family living in a supervised publicly or privately-operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or
 - c) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;
- 2) Category 2 Imminently Losing Primary Nighttime Residence - An individual or family who will imminently lose their primary nighttime residence, provided that:
 - a) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
 - b) No subsequent residence has been identified; and
 - c) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks needed to obtain other permanent housing;
- 3) Category 3 Persistent Housing Instability – People with all of the characteristics below:
 - a) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
 - b) Defined as homeless under other federal statutes (for example the definition used by the Department of Education) who do not otherwise qualify as homeless under HUD's definition;
 - c) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;
 - d) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

- e) Have one or more of the following: chronic disabilities, chronic physical or mental health conditions substance addiction histories of domestic violence or childhood abuse child with a disability two or more barriers to employment, which include - lack of a high school degree or GED - illiteracy - low English proficiency - history of incarceration or detention for criminal activity - history of unstable employment
- 4) Category 4 Fleeing/Attempting to Flee Domestic Violence: Any individual or family who:
 - a) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence
 - b) Has no other residence; and
 - c) Lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, to obtain other permanent housing

HUD- U.S. Department of Housing and Urban Development

NHCD- Neighborhood Housing and Community Development Office

Subrecipient- An organization receiving ESG funds from the City to undertake eligible ESG activities

II. General

The Emergency Solutions Grant Program (ESG), formerly known as the Emergency Shelter Grant Program, is funded through the City's Neighborhood Housing and Community Development Office (NHCD), which is made available by the U.S. Department of Housing and Urban Development (HUD). The City utilizes ESG funds to provide an array of services to assist homeless persons and persons at-risk of homelessness.

The ESG program is designed to be the first step in a continuum of assistance to help clients quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness.

The City's Austin Public Health Department is responsible for the implementation of ESG in compliance with the governing regulations of the ESG program. The City's Neighborhood Housing and Community Development Office (NHCD) is responsible for the planning and administration of the ESG program. The Community Development Officer (CDO) of NHCD has the authority to establish processes, procedures, and criteria for the implementation and operation of the program, and to waive compliance with any provision of these guidelines if s/he determines that to do so does not violate any Federal, state, or local law or regulation, and is in the best interest of the City. Nothing contained, stated, or implied in this document shall be construed to limit the authority of the City to administer and carry out the program by whatever means and in whatever manner it deems appropriate.

III. Eligible Organizations

The subrecipient must be a unit of local government or a private, non-profit organization, as defined by the Internal Revenue Service tax code, evidenced by having a Federal identification number, filed articles of incorporation, and written organizational by-laws.

IV. Ineligible Organizations

An organization will not be eligible to apply for ESG funds if it meets the following conditions:

- 1) Outstanding audit or monitoring findings, unless appropriately addressed by a corrective action plan;
- 2) Current appearance on the List of Suspended and Debarred Contractors
- 3) Terms and conditions of existing contract are not in full compliance;
- 4) History of non-performance with contracts.

V. Financial Terms

- 1) Grantee shall expend the City budget in a reasonable manner in relation to Agreement time elapsed and/or Agreement program service delivery schedule.
- 2) All grant funds allocated must be completely spent down within the 24-month allocation period.
- 3) If the Grantee has a remaining balance at the end of the first twelve-month period, the Grantee must submit a request to spend down remaining balance to the Assistant Director of the Austin Public Health, Health Equity Community Engagement Division (HECE).
- 4) If cumulative expenditures are not within acceptable amounts, spending rates, or in accordance with grant compliance the City may require the Grantee to:
 - a) submit an expenditure plan, and/or
 - b) amend the Agreement budget amount to reflect projected expenditures, as determined by the City.

In order to be eligible for services under the ESG program, clients must meet HUD's definition of homelessness or at-risk of homelessness, and must meet annual income guidelines for homelessness prevention activities.

VI. Matching Funds

Subrecipient organizations that receive ESG funds must provide a dollar for dollar (or 100%) match to their ESG award amount.

- 1) Sources of matching funds include:
 - a) Cash Contributions- Cash expended for allowable costs identified in 2 CFR Part 200. Program Income for the ESG program can also be used as match funds. Match funds are identified in 2CFR Part 200.306
 - b) Non-Cash Contributions- The value of any real property, equipment, goods, or services.
- 2) Funds used to match a previous ESG grant may not be used to match a subsequent award.
- 3) The following requirements apply to matching contributions from a Federal source of funds:
 - a. The recipient must ensure the laws governing any funds to be used as matching contributions do not prohibit those funds from being used to match Emergency Solutions Grant (ESG) funds.
 - b. If ESG funds are used to satisfy the matching requirements of another Federal program, then funding from that program may not be used to satisfy the matching requirements under this section.
 - c. Contributions that have been or will be counted as satisfying a matching requirement of another Federal grant or award may not count as satisfying the matching requirement
- 4) Costs paid by program income shall count toward meeting the recipient's matching requirements, provided the costs are eligible ESG costs that supplement the recipient's ESG program

VII. Eligible Activities

Each sub-recipient will be allocated funding by activity type, and may have multiple activities in one program. The following is a list of eligible activities for the ESG Program:

- 1) Street Outreach- Support services limited to providing emergency care on the streets, including engagement, case management, emergency health and mental health services, and transportation;
- 2) Emergency Shelter- Includes essential services, case management, child care, education, employment, outpatient health services legal services, life skills training, mental health & substance abuse services, transportation, shelter operations, and funding for hotel/motel stays under certain conditions;
- 3) Homeless Prevention- Includes housing relocation & stabilization services and short/medium-term rental assistance for individuals/families who are at risk of homelessness;
- 4) Rapid Re-Housing- Includes housing relocation & stabilization services and short/medium-term rental assistance to help individuals/families move quickly into permanent housing and achieve stability;
- 5) Homeless Management Information System (HMIS) costs; and
- 6) ESG Administration costs.

VIII. Client Eligibility

In order to be eligible for services under the ESG program, clients must meet HUD's definition of homelessness or at-risk of homelessness, and must meet annual income guidelines for homelessness prevention activities.

1) ESG Eligibility Documentation

- a) Homelessness Prevention: This program will not provide Homelessness Prevention Services.
- b) Rapid Re-Housing:
- c) Please refer to the *Homeless Eligibility Form* for more information on documenting homelessness for ESG clients.
- d) Sub-recipient agencies must collect the required supporting documentation requested in the *Homeless Eligibility Form* in order for clients to be considered eligible for services
- e) All eligibility and supporting documentation for Rapid Re-Housing clients must be maintained in each client's file
- f) Clients will be referred to ESG programs through the Coordinated Assessment or Coordinated Entry process.
- g) CDU-Specific Client Eligibility Requirements
 - i. Referral through Coordinated Assessment
 - ii. HIV Positive, homeless individuals
- h) DACC-Specific Eligibility Requirements
 - i. Referral through Coordinated Assessment
- i) Front Steps Specific Eligibility Requirements
 - i. Referral through Coordinated Assessment
 - ii. Targeted to those who sheltered at ARCH and coming from the streets outside the ARCH

2) Confidentiality of Client Information

- a) Subrecipients must have written client confidentiality procedures in their program policies and procedures that conform to items b – d below:

- b) All records containing personally identifying information of any individual or family who applies for and/or receives ESG assistance must be kept secure and confidential.
- c) The address or location of any domestic violence project assisted under ESG shall not be made public.
- d) The address or location of any housing for a program participant shall not be made public.

IX. Emergency Shelter

Requirement: Policies and procedures for admission, diversion, referral and discharge by emergency shelters assisted under ESG, including standards regarding length of stay, if any, and safeguards to meet the safety and shelter needs of special populations.

The ESG-funded emergency shelter, Austin Resource Center for the Homeless, or ARCH is currently limited to those clients in case-management, with 20 beds held open for Emergency Night Shelter for men. The ARCH provides Day Resource Center for enrolled clients. Case Management and other co-located services are provided on-site by the following local service providers.

Sleeping Unit Reservation System: Of the 150 sleeping units, approximately 130 are reserved for those clients in full-time case-management with the remaining 20 held open for Emergency Night Shelter.

There is no length of stay for the shelter, and in case management, the general length is 6 months with evaluation on a case by case basis. Clients are informed that if they have a reservation, but they do not arrive to check in, within a set number of days, their reserved place will be made available to other clients on the waiting list. There are also available beds in coordination with the following participating agencies: CommUnity Care Clinic, Veterans Administration (VA), and Austin/Travis County Integral Care, the local mental health authority. All of these case-managed clients work with their case manager to determine a housing plan and are connected to other resources to find permanent housing. The client is informed of the grievance process, and their end date for services determined on a case by case basis.

Clients are encouraged to work with Case Managers to progress towards personal goals related to obtaining/maintaining sustainable income, exploring viable housing options, and addressing self-care issues that impact progress towards self-sufficiency. Case Management services are based on a Harm Reduction philosophy and the stages in the Trans-theoretical Model of Change. Various techniques, including motivational interviewing, are effectively utilized in working with clients whose needs vary across a spectrum of vulnerability. Men's and women's support groups as well as anger management classes are offered through case management. ARCH clients with domestic violence concerns are offered coordination and referral to appropriate programs on a case by case basis.

Front Steps, the agency administering the ARCH, has been designated as one of the "front doors"/community portals in the Coordinated Assessment process. Using the Vulnerability Index & Service Prioritization Decision Assistance Tool (VI-SPDAT) as part of the Coordinated Assessment process, coupled with more robust data entry into HMIS, clients who score within range and are identified as likely benefitting from receiving Shelter Case Management services will be offered these services as openings in the program become available.

The following is provided in the case that a client is terminated:
Written notice to the participant containing a clear statement of the reason for termination.

A review of the decision, in which the participant is given the opportunity to present written or oral objections before a person other than the person(or subordinate of the person) who made or approved the termination decisions, AND

Prompt written notification to the program participant.

Because the ARCH is a City building, the agencies cannot deny citizens access to the shelter property on a permanent basis.

X. Rapid Rehousing and Other ESG-funded Services

There are no Street Outreach services funded by ESG.

There are no homeless prevention services funded by ESG.

Requirement: Policies and procedures for determining and prioritizing which eligible families and individuals will receive rapid re-housing assistance.

All programs funded through the Emergency Solutions Grant will use Coordinated Entry for referrals for the program in order to serve the most vulnerable Rapid Rehousing clients in the community. Agency eligibility could include, for example, HIV status for the Communicable Disease Unit. All programs help clients go through the Coordinated Entry process to access appropriate referrals and community programs.

Each client will be individually assessed for the amount of Rapid Rehousing using progressive engagement and housing first principles. If a client or family needs continued services and financial assistance past the initial date of entry into the program, agencies will work to address those needs until the client exits the program. Other funding sources will be used to address the other service needs of the client such as case management, housing location or financial and rental assistance as needed.

Requirement: *Standards for determining the type, amount and duration of housing stabilization and/or relocation services to provide a program participant, including the limits on rapid re-housing assistance.*

1) All Rapid Rehousing programs will include the following components:

- a) Housing Stability Plan with Exit Strategy
- b) Progressive Engagement
- c) Coordination with other HUD funded programs and regular review the program's progress towards the HUD benchmarks:
 - i. Reducing the length of time program participants spend homeless;
 - ii. Exiting households to permanent housing, and
 - iii. Limiting returns to homelessness within a year of program exit.

2) Also, all RR programs will provide the following services with ESG funds or with another funding source. If the agency is not able to provide all of these services they will work with a collaborative partner to provide them.

- a) Housing Location
- b) Financial Assistance – Rental, Deposits, Application Fees, etc.
- c) Housing Stability Case Management

3) ESG Rapid Rehousing Financial Assistance Guidelines:

- a) Security Deposits are available for no more than 2 months' rent.
- b) Last Month's Rent is only paid if the last month's rent is necessary for the participant to obtain housing, if it is paid at the same time as the security deposit and first month's rent, and does not exceed one month's rent.
- c) Utility Deposit, Payments and Arrears is paid if it is within 24 month limit, including up to 6 months of utility arrears, and if the utility account is in the name of the participant or if there is proof of responsibility, and is for eligible gas, electric, water and sewage.
- d) Caps on assistance by program:
 - a. Downtown Austin Community Court: Financial Assistance can include up to \$2300 a year in direct financial assistance for all eligible financial assistance and rental assistance funding, with a 24 month cap of \$4600.
 - b. Front Steps: None beyond the regulations above.
 - c. Communicable Disease Unit: Does not administer financial assistance and rental assistance.
- e) Changes in household composition. The limits on the assistance under this section apply to the total assistance an individual receives, either as an individual or as part of a family.
- f) Limit of months of assistance. No client may receive more than 24 months of assistance in a three-year period.
- g) Recertification. Clients will be recertified at least every twelve months to determine ongoing eligibility as per 576.401. Recertification will assess clients to see if they do not have an annual income that exceeds 30% AMI, AND lack sufficient resources and support networks to retain housing without ESG assistance.

Requirement: Standards for determining what percentage or amount of rent and utilities cost each program participant must pay while receiving rapid re-housing assistance.

Most clients receiving financial assistance through the Emergency Solutions Grant will have high housing barriers and will be highly vulnerable. Participants are not required to contribute a percentage of their income to rent or utilities, so there are no standards developed.

Requirement: Standards for determining how long a particular program participant will be provided with rental assistance.

1) Short-term and medium-term rental assistance

Short and medium term rental assistance can be provided to a program participant with up to 24 months of rental assistance during any 3-year period. This assistance may be short-term rental assistance, medium-term rental assistance, payment of rental arrears, or any combination of this assistance.

- a) Short and Medium Term Rental Assistance - Short-term rental assistance is assistance for up to 3 months of rent; Medium-term rental assistance is assistance for more than 3 months but not more than 24 months of rent; Rental assistance for this program will be tenant-based.
 - i. Rental Assistance use with other subsidies. Except for a one-time payment of rental arrears on the tenant's portion of the rental payment, rental assistance cannot be provided to a program participant who is receiving tenant-based rental assistance, or

living in a housing unit receiving project-based rental assistance or operating assistance, through other public sources. Rental assistance may not be provided to a program participant who has been provided with replacement housing payments under the URA during the period of time covered by the URA payments.

- i. Fair Market Rent - Rental Assistance must only be provided if rent does not exceed Fair Market Rent and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.
 - ii. For purposes of calculating rent, the rent shall equal the sum of the total monthly rent for the unit, any fees required for occupancy under the lease (other than late fees and pet fees) and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.
 - iii. Rental assistance agreement. The recipient or subrecipient may make rental assistance payments only to an owner with whom the recipient or subrecipient has entered into a rental assistance agreement. The rental assistance agreement must set forth the terms under which rental assistance will be provided, including the requirements that apply under this section. The rental assistance agreement must provide that, during the term of the agreement, the owner must give the recipient or subrecipient a copy of any notice to the program participant to vacate the housing unit, or any complaint used under state or local law to commence an eviction action against the program participant.
 - iv. Late payments. The recipient or subrecipient must make timely payments to each owner in accordance with the rental assistance agreement. The rental assistance agreement must contain the same payment due date, grace period, and late payment penalty requirements as the program participant's lease. The recipient or subrecipient is solely responsible for paying late payment penalties that it incurs with non-ESG funds.
 - v. Lease. Each program participant receiving rental assistance must have a legally binding, written lease for the rental unit, unless the assistance is solely for rental arrears. The lease must be between the owner and the program participant. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance under paragraph (i) of this section, the lease must have an initial term of one year.
- b) Tenant-based rental assistance. Rental assistance for this program will be tenant-based, and all programs will provide the minimum amount of assistance needed for client to stabilize using the principles of Progressive Engagement.
- i. A program participant who receives tenant-based rental assistance may select a housing unit in which to live and may move to another unit or building and continue to receive rental assistance, as long as the program participant continues to meet the program requirements.
 - ii. The recipient may require that all program participants live within a particular area for the period in which the rental assistance is provided.
 - iii. The rental assistance agreement with the owner must terminate and no further rental assistance payments under that agreement may be made if:

- The program participant moves out of the housing unit for which the program participant has a lease;
 - The lease terminates and is not renewed; or
 - The program participant becomes ineligible to receive ESG rental assistance.
- c) Rental Arrears are paid if the client is assisted with one-time payment of up to 6 months of rental arrears, including any late fees on those arrears. A lease must be present in the file with the participant's name on the lease or a document of the rent payments/financial records, as well as Rent Reasonableness, Lead Based Paint and Habitability Standards forms. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance under paragraph (i) of this section, the lease must have an initial term of one year.
- d) Caps on assistance by program:
- i. Downtown Austin Community Court: Financial Assistance can include up to a year in direct financial assistance for all eligible financial assistance and rental assistance funding.
 - ii. Front Steps: None beyond the regulations above.
 - iii. Communicable Disease Unit: Does not administer financial assistance and rental assistance.
- e) All clients will be recertified at least every twelve months to determine ongoing eligibility as per 576.401. Recertification will assess clients to see if they do not have an annual income that exceeds 30% AMI, AND lack sufficient resources and support networks to retain housing without ESG assistance.

XI. Coordination Between Service Providers

The following list gives the types of service coordination activities to be undertaken for the ESG Program: Case management, permanent supportive housing, rapid re-housing and housing location and financial assistance.

Services will be coordinated between the downtown Austin Resource Center for the Homeless (ARCH), Downtown Austin Community Court, and in consultation with the local Continuum of Care as well as other service providers such as Austin Travis County Integral Care, Caritas of Austin, Salvation Army, Veterans Administration, Continuum of Care Permanent Supportive Housing programs and other appropriate federal, state and local service providers.

Agency	Case Management/ Supportive Services	Permanent Supportive Housing	Rapid Rehousing/ Housing Location	Direct Financial Assistance
Front Steps- PSH and Rapid Rehousing	X	X	X	X
Caritas of Austin	X	X	X	X

with CoC and City funding				
Downtown Austin Community Court	X		X	X
Communicable Disease Unit	X		X	
Other Continuum of Care programs	X	X		
City-funded Social Service Agencies	X	X	X	X

ESG Rapid Rehousing Program Design: All ESG Programs will have all components or coordinate with other funding sources or entities so that all needs of the Rapid Rehousing clients will be adequately addressed.

RR Agency	Case Management/ Supportive Services	Housing Location	Direct Financial Assistance	Rental Assistance
Front Steps	Front Steps	Front Steps	Front Steps HHSP and SSVF; BSS Plus	Front Steps HHSP and SSVF, BSS Plus
Communicable Disease Unit (CDU)	CDU	CDU/DACC ESG	DACC ESG	DACC ESG
Downtown Austin Community Court	DACC	DACC	DACC ESG	DACC ESG

XII. Homeless Management Information System (HMIS)

Organizations receiving funding from the City of Austin for homelessness prevention and homeless intervention services are required to utilize the Local Homeless Management Information System (HMIS) to track and report client information for individuals who are at risk of homelessness or who are homeless. A high level of data quality is required. All ESG-funded programs will also be working with the community's Coordinated Entry process.

ESG Specific Requirements Include:

- 1) Entering client data into HMIS as per the guidelines outlined in an agreement with ECHO HMIS and under the requirements of the Austin/Travis County HMIS Data Quality Assurance Plan.
- 2) ESG-funded programs will participate in the centralized or coordinated assessment system in HMIS, as required under § 576.400(d).
- 3) The ESG Rapid Rehousing program will accept referrals through Coordinated Entry.
- 4) Utilizing the ESG eligibility form to determine homeless eligibility.
- 5) Demographic data collected in the ESG Demographic Form
- 6) HUD 40118 form or other required form required for Emergency Solutions Grants

- 7) Submission of HUD reporting information for the Consolidated Plan, Action Plan and Consolidated Annual Performance and Evaluation Report (CAPER).
- 8) Participation in community homeless coordination and planning.
- 9) Other HMIS Requirements:
Organizations receiving funding from the City of Austin for homelessness prevention and homeless intervention services are required to utilize HMIS to track and report client information for individuals who are at risk of homelessness or who are homeless. A high level of data quality is required. The Ending Community Homelessness Coalition (ECHO) currently serves as the local HMIS administrator.

Section 2: ESG POLICIES AND PROCEDURES

Management and operation of approved projects is the responsibility of the Subrecipient. The Subrecipient is the entity that will receive the City contract. Therefore, the subrecipient has the overall responsibility of the project's successful completion.

I. Grant Subaward Process

At its discretion, the City may use a competitive Request for Application and comprehensive review process to award ESG funding to providers of services to homeless persons and persons at-risk of homelessness. Activities will be consistent with the City's Consolidated Plan, in compliance with local, state, and Federal requirements and the governing regulations for use of ESG funds, and in conformance with program standards. The City will enter into written agreements with selected Subrecipients and will work with Subrecipients to ensure that project costs are reasonable, appropriate, and necessary to accomplish the goals and objectives of the City's overall ESG Program. The subrecipient must be able to clearly demonstrate the benefits to be derived by the services provided to homeless individuals, and to low-to-moderate income families. Performance measures will be established in the contract. All ESG award decisions of the City are final.

II. Contracting

Subrecipients must enter into a written contract with the City for performance of the project activities. Once a contract is signed, the subrecipient will be held to all agreements therein.

- 1) Members of the Subrecipient organization, volunteers, residents, or subcontractors hired by the organization may carry out activities. Subrecipients must enter into a written contract with the subcontractors carrying out all or any part of an ESG project. All subcontractors must comply with the City and Federal procurement and contracting requirements.
- 2) All contracts are severable and may be canceled by the City for convenience. Project funding is subject to the availability of ESG funds and, if applicable, City Council approval.
- 3) Amendments - Any amendments to a contract must be mutually agreed upon by the Subrecipient and the City, *in writing*. Amendment requests initiated by the Subrecipient must clearly state the effective date of the amendment, in writing. Austin Public Health (APH) staff will determine if an amendment request is allowable. APH reserves the right to initiate amendments to the contract.
- 4) Liability - Subrecipients shall forward Certificates of Insurance to the Austin Public Health Department within 30 calendar days after notification of the award, unless otherwise specified. The City's Risk Management Department will review and approve the liability insurance requirements for each contract. Subrecipients must maintain current insurance coverage throughout the entire contract period, as well as for any subsequent amendments or contract extensions.

III. Internal Controls

Subrecipients must have policies and procedures in place to protect assets, create accurate and reliable financial reporting, maintain compliance with all applicable laws and regulations, and ensure that agency operations are effective and efficient. These Internal Controls should include, but are not limited to:

- 1) Information and documents required through the standard City Boilerplate
 - a. Business continuity/risk management plans

- b. Conflict of interest policy
- c. Whistleblower policy
- d. Financial management policy
- 2) Staff and Program evaluations
- 3) Maintaining annual income and expense budget reports to compare expected spending and revenue with actual spending and revenue
- 4) Information Technology controls
- 5) Written job descriptions to clearly define roles within the organization

IV. Recordkeeping Requirements

- 1) Project Records- The Subrecipient must manage their contract and maintain records in accordance with City and Federal policies and must be in accordance with sound business and financial management practices, which will be determined by the City. Record retention for all ESG records, including client information, is five years after the expenditure of contract funds.
- 2) Client Records- The Subrecipient must maintain the following types of client records to show evidence of services provided under the ESG program:
 - a) Client Eligibility records, including documentation of Homelessness, or At-Risk of Homelessness plus income eligibility and support documentation.
 - b) For Rapid Rehousing client files, a copy of the ESG Rapid Rehousing Client File Review checklist and Rapid Rehousing Financial Assistance Checklist should be placed at the beginning of the file and peer reviewed before any financial assistance is provided
 - c) Documentation of Continuum of Care centralized or coordinated assessment (for client intake)
 - d) Financial Assistance backup documentation required for each type of assistance outlined in the previous sections. Rental assistance agreements and payments, including security deposits, and all backup documentation required for each type of assistance outlined in the following sections.
- 3) Housing Financial Assistance
For eligible clients, financial assistance may be allocated for eligible expenses with the following requirements and limitations:
 - a) Rental application fees.
 - b) Security deposits. Equal to no more than 2 months' rent.
 - c) Last month's rent. If necessary to obtain housing for a program participant, the last month's rent may be paid from ESG funds to the owner of that housing at the time the owner is paid the security deposit and the first month's rent. This assistance must not exceed one month's rent and must be included in calculating the program participant's total rental assistance, which cannot exceed 24 months during any 3-year period.
 - d) Utility deposits.
 - e) Utility payments. Up to 24 months of utility payments per program participant, per service, including up to 6 months of utility payments in arrears, per service. A partial payment of a utility bill counts as one month. This assistance may only be provided if the program participant or a member of the same household has an account in his or her name with a utility company or proof of responsibility to make utility payments. Eligible utility services are gas, electric, water, and sewage. No program participant shall receive more than 24 months of utility assistance within any 3-year period.
 - f) Financial assistance cannot be provided to a program participant who is receiving the same type of assistance through other public sources.

- g) Short-Term and Medium-Term Rental Assistance. Up to 24 months of rental assistance during any 3-year period. This assistance may be short-term rental assistance, medium-term rental assistance, payment of rental arrears, or any combination of this assistance.
 - i. Short-term rental assistance is assistance for up to 3 months of rent.
 - ii. Medium-term rental assistance is assistance for more than 3 months but not more than 24 months of rent.
 - iii. Payment of rental arrears consists of a one-time payment for up to 6 months of rent in arrears, including any late fees on those arrears.
 - iv. Rental assistance may be tenant-based or project-based
- h) Rent Restrictions.
 - i. Rental assistance cannot be provided unless the rent does not exceed the Fair Market Rent (FMR) established by HUD, as provided under 24 CFR part 888, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.
 - ii. For purposes of calculating rent under this section, the rent shall equal the sum of the total monthly rent for the unit, any fees required for occupancy under the lease (other than late fees and pet fees) and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.
 - iii. Rental assistance agreement must state that rental assistance payments will be made only to a landlord or owner with whom the subrecipient has entered into a rental assistance agreement. The rental assistance agreement must set forth the terms under which rental assistance will be provided, including the requirements that apply under this section. The rental assistance agreement must provide that, during the term of the agreement, the landlord/owner must give Front Steps a copy of any notice to the program participant to vacate the housing unit, or any complaint used under state or local law to commence an eviction action against the program participant.
 - iv. Late payments. Subrecipients must make timely payments to each landlord/owner in accordance with the rental assistance agreement. The rental assistance agreement must contain the same payment due date, grace period, and late payment penalty requirements as the program participant's lease. The recipient or sub-recipient is solely responsible for paying late payment penalties that it incurs with non-ESG funds.
 - v. Lease. Each program participant receiving rental assistance must have a legally binding, written lease for the rental unit, unless the assistance is solely for rental arrears. The lease must be between the landlord/owner and the program participant. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance, the lease must have an initial term of one year.
- i) All City of Austin ESG-funded Rapid Re-Housing programs will include the following components:
 - i. • Housing Stability Plan with Exit Strategy
 - ii. Progressive Engagement

- iii. Coordination with other HUD-funded programs and regular review the program's progress towards the HUD benchmarks;
- iv. Reducing the length of time program participants spend homeless;
- v. Exiting households to permanent housing, and
- vi. Limiting returns to homelessness within a year of program exit.

j) All of the below items must be completed *before* financial assistance can be provided:

Forms Required
<i>Required for housing location, housing stability case management, financial assistance, rental assistance</i>
Habitability Standards
Lead Hazard Standards
Rent-Reasonableness
Peer Reviewed ESG Rapid Rehousing Client File Review
<i>Required for rental assistance – arrears and ongoing rent (in addition to the above forms)</i>
Lease in client's name or a document of the rent payments/financial records
Fair market rent calculation
Landlord Rental Agreement

V. Reporting Requirements

1) Monthly Claims Requests

Claims Requests must be submitted within fifteen (15) calendar days after the reporting month's end with backup uploaded to the City's online contract management system, which identify the allowable expenditures incurred under this contract. The backup should be uploaded with the Claims request and should include:

- a) Front Steps: General Ledger
- b) City Agreements: Grant Cost Report grant costs with appropriate backup from the Digital Express Reports (DXR)
- c) Rapid Rehousing Financial Assistance programs: backup documentation for all direct financial assistance including a Rapid Rehousing Financial Assistance Checklist to verify that all required forms and steps were completed before releasing financial assistance to clients.
- d) Current Month Matching Funds Statement must be submitted monthly in the City's online contract management system, along with the monthly Claims report. The contractor is required to expend and document Matching Funds against payments to be received under this Agreement. The Claim cannot be approved unless the Matching Funds statement is included.

- e) All monthly claims reports must include a copy of the HMIS Universal Data Elements quality report for the month requested with ratings of either “Excellent” or “Acceptable” – if data quality reports fall below minimum standards, payments may be withheld until reports improve to “Excellent” or “Acceptable” ratings

2) Quarterly Reporting

- a) Quarterly performance reports shall be submitted, in a format prescribed by the City, by the 15th calendar day of the month after the quarter end, which identify the activities accomplished under this contract.
- b) Other performance metrics may be required to align with HUD system-wide performance measures.
- c) ESG Demographic Report must be submitted within fifteen (15) calendar days after the end of the preceding quarter. The data from this report should be able to be extracted from HMIS. Sections 4-8 and 10 must be completed by all ESG programs that serve clients.
- d) Quarterly Claims Review – Quarterly, one Claim will be reviewed for complete documentation including but not limited to:
 - i. Timesheets
 - ii. Check stubs, copies of checks
 - iii. Client File Checklists
 - iv. Peer Reviewed Rapid Rehousing Client File Review Form showing that the required documentation for clients served were collected in the correct order
 - v. Client file documentation of eligibility and appropriate housing documentation
 - vi. If issues are found with the quarterly reviews, or if HUD deems it necessary, the Claims Review process will be conducted monthly rather than quarterly

3) Annual Close-Out Reporting

- a) The Federal ESG program year ends on September 30th. At completion of all activities, a Contract Closeout Report must be submitted within 30 days of the end of the contract. The subrecipient is required to supply such information, in such form and format as the City and HUD may require. All records and reports must be made available to any authorized City representative upon request and without prior notice.
- b) For contracts that contain renewal/extension options, an Annual Progress Report shall be completed using the City’s online contract management system by the Grantee and submitted to the City within 60 calendar days following the end of each Program Period identified in the Agreement Exhibits.
- c) For contracts that contain renewal/extension options, an Annual Progress Report shall be completed using the City’s online contract management system by the Grantee and submitted to the City within 60 calendar days following the end of each Program Period identified in Section 4.1.2 of the Contract boilerplate.
- d) For those Agreements that are ending, a Closeout Report shall be completed by the Grantee through the City’s online contract management system and submitted to the City within 30 calendar days following the expiration or termination of this Agreement. Any encumbrances of funds incurred prior to the date of termination of this Agreement shall be subject to verification by the City. Upon termination of this Agreement, any unused funds, unobligated funds, rebates, credits, or interest earned on funds received under this Agreement shall be returned to the City.

- e) The Closeout Report must contain all information that the City requires during the normal Contract Close-Out Report or, if the Contract is ongoing but the Program Period had ended, all of the information the City requires for their Contract Progress Report.
- f) All ESG Subrecipients must use HMIS to report on clients served by the ESG program.
- g) All ESG programs are required to submit end of year reporting according to HUD requirements. This may include:
 - i. providing reports in the contract database earlier than the normal fourth quarter deadline
 - ii. Running and submitting an HMIS report to the HUD database, SAGE.

VI. Program Limitations

- 1) ESG Administration costs are limited to 7.5% of the total ESG allocation.
- 2) ESG Street Outreach and Emergency Shelter costs are limited to the greater of: 60% of the City's 2011-12 ESG grant -or- the amount committed to emergency shelter for the City's 2010-11 ESG allocation.
- 3) Program Income - Income derived from any ESG activity must be recorded and reported to APH as program income. Such income may not be retained or disbursed by the subrecipient without written approval from APH and is subject to the same controls and conditions as the Subrecipient's grant allocation.
- 4) ESG funds may not be used for lobbying or for any activities designed to influence legislation at any government level.
- 5) A church or religious affiliated organization must show secularism when submitting an ESG application.
- 6) Any ESG funds that are unallocated after the funding cycle will be reprogrammed by APH. Contracts that show three (3) consecutive months of inactivity (as documented by monthly reports or non-submission of required reports) will be reviewed on a case-by-case basis, and may be irrevocably canceled.

VII. Performance Standards

ESG-funded programs will report into HMIS and have a high level of data quality specified in Section A. XII. Homeless Management Information Systems. HMIS data quality is reviewed quarterly by City staff. All data quality is reviewed by the ECHO HMIS Administrator.

Performance measures will be reviewed quarterly by Austin Public Health Department. Measures will also be reviewed annually by the local Continuum of Care decision-making body, ECHO, during the annual Consolidated Evaluation and Performance Report process.

VIII. Termination Procedures

The following is provided in the case that a client is terminated:

- 1) Written notice to the participant containing a clear statement of the reason for termination.
- 2) A review of the decision, in which the participant is given the opportunity to present written or oral objections before a person other than the person(or subordinate of the person) who made or approved the termination decisions, AND
- 3) Prompt written notification to the program participant.

IX. Accessibility

In order to demonstrate compliance with the Americans with Disabilities Act (ADA) and Section 504 requirements, the following statements must be added to all public notices, advertisements, program applications, program guidelines, program information brochures or packages, and any other material containing general information that is made available to participants, beneficiaries, applicants, or employees:

_____ (*insert the name of your organization*) as a subrecipient of the City of Austin is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please call _____ (*insert your organization's phone number*) (voice) or Relay Texas at 1-800-735-2989 (TDD) for assistance.

_____ (*insert the name of your organization*) como un subreceptor de la Ciudad de Austin se compromete a cumplir con el Decreto de los Americanos Incapacitados. Con solo solicitarlo se proveerán modificaciones e igual acceso a comunicaciones. Para información favor de llamar a _____ (*insert your organization's phone number*) (voz) o Relay Texas 1-800-735-2989 (TDD) para asistencia.

Title 24: Housing and Urban Development

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

Section Contents

Subpart A—General Provisions

- § 576.1 Applicability and purpose.
- § 576.2 Definitions.
- § 576.3 Allocation of funding.

Subpart B—Program Components and Eligible Activities

- § 576.100 General provisions and expenditure limits.
- § 576.101 Street outreach component.
- § 576.102 Emergency shelter component.
- § 576.103 Homelessness prevention component.
- § 576.104 Rapid re-housing assistance component.
- § 576.105 Housing relocation and stabilization services.
- § 576.106 Short-term and medium-term rental assistance.
- § 576.107 HMIS component.
- § 576.108 Administrative activities.
- § 576.109 Indirect costs.

Subpart C—Award and Use of Funds

- § 576.200 Submission requirements and grant approval.
- § 576.201 Matching requirement.
- § 576.202 Means of carrying out grant activities.
- § 576.203 Obligation, expenditure, and payment requirements.

Subpart D—Reallocations

- § 576.300 In general.
- § 576.301 Metropolitan cities and urban counties.
- § 576.302 States.
- § 576.303 Territories.

Subpart E—Program Requirements

- § 576.400 Area-wide systems coordination requirements.
- § 576.401 Evaluation of program participant eligibility and needs.
- § 576.402 Terminating assistance.
- § 576.403 Shelter and housing standards.
- § 576.404 Conflicts of interest.
- § 576.405 Homeless participation.
- § 576.406 Faith-based activities.
- § 576.407 Other Federal requirements.
- § 576.408 Displacement, relocation, and acquisition.

Subpart F—Grant Administration

- § 576.500 Recordkeeping and reporting requirements.
- § 576.501 Enforcement.

Authority: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 576.1 Applicability and purpose.

This part implements the Emergency Solutions Grants (ESG) program authorized by subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371–11378). The program authorizes the Department of Housing and Urban Development (HUD) to make grants to States, units of general purpose local government, and territories for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain expenses related to operating emergency shelters, for essential services related to emergency shelters and street outreach for the homeless, and for homelessness prevention and rapid re-housing assistance.

§ 576.2 Definitions.

At risk of homelessness means:

(1) An individual or family who:

(i) Has an annual income below 30 percent of median family income for the area, as determined by HUD;

(ii) Does not have sufficient resources or support networks, *e.g.*, family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the “homeless” definition in this section; and

(iii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by Federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than 1.5 persons reside per room, as defined by the U.S. Census Bureau;

(F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan;

(2) A child or youth who does not qualify as “homeless” under this section, but qualifies as “homeless” under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as “homeless” under this section, but qualifies as “homeless” under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

Consolidated plan means a plan prepared in accordance with 24 CFR part 91. An *approved consolidated plan* means a consolidated plan that has been approved by HUD in accordance with 24 CFR part 91.

Continuum of Care means the group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers; victim service providers; faith-based organizations; governments; businesses; advocates; public housing agencies; school districts; social service providers; mental health agencies; hospitals; universities; affordable housing developers; law enforcement; organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area.

Emergency shelter means any facility, the primary purpose of which is to provide a temporary shelter for the homeless in general or for specific populations of the homeless and which does not require occupants to sign leases or occupancy agreements. Any project funded as an emergency shelter under a Fiscal Year 2010 Emergency Solutions grant may continue to be funded under ESG.

Homeless means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

- (i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
- (ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or
- (iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

- (i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
- (ii) No subsequent residence has been identified; and
- (iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

- (i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);
- (ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;
- (iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and
- (iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

- (i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;
- (ii) Has no other residence; and
- (iii) Lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, to obtain other permanent housing.

Homeless Management Information System (HMIS) means the information system designated by the Continuum of Care to comply with the HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at-risk of homelessness.

Metropolitan city means a city that was classified as a metropolitan city under 42 U.S.C. 5302(a) for the fiscal year immediately preceding the fiscal year for which ESG funds are made available. This term includes the District of Columbia.

Private nonprofit organization means a private nonprofit organization that is a secular or religious organization described in section 501(c) of the Internal Revenue Code of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. A private nonprofit organization does not include a governmental organization, such as a public housing agency or housing finance agency.

Program income shall have the meaning provided in 24 CFR 85.25. Program income includes any amount of a security or utility deposit returned to the recipient or subrecipient.

Program participant means an individual or family who is assisted under ESG program.

Program year means the consolidated program year established by the recipient under 24 CFR part 91.

Recipient means any State, territory, metropolitan city, or urban county, or in the case of reallocation, any unit of general purpose local government that is approved by HUD to assume financial responsibility and enters into a grant agreement with HUD to administer assistance under this part.

State means each of the several States and the Commonwealth of Puerto Rico.

Subrecipient means a unit of general purpose local government or private nonprofit organization to which a recipient makes available ESG funds.

Territory means each of the following: the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

Unit of general purpose local government means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

Urban county means a county that was classified as an urban county under 42 U.S.C. 5302(a) for the fiscal year immediately preceding the fiscal year for which ESG funds are made available.

Victim service provider means a private nonprofit organization whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. This term includes rape crisis centers, battered women's shelters, domestic violence transitional housing programs, and other programs.

§ 576.3 Allocation of funding.

(a) *Territories*. HUD will set aside for allocation to the territories up to 0.2 percent, but not less than 0.1 percent, of the total amount of each appropriation under this part in any fiscal year. HUD will allocate this set-aside amount to each territory based on its proportionate share of the total population of all territories and its rate of compliance with the most recent expenditure deadline under §576.203.

(b) *States, metropolitan cities, and urban counties*. HUD will allocate the amounts that remain after the set-aside to territories under paragraph (a) of this section to States, metropolitan cities, and urban counties, as follows:

(1) HUD will provide that the percentage of the total amount available for allocation to each State, metropolitan city, or urban county is equal to the percentage of the total amount available under section 106 of the Housing and Community Development Act of 1974 for the prior fiscal year that was allocated to that State, metropolitan city, or urban county.

(2) Except as otherwise provided by law, if the amount a metropolitan city or urban county would be allocated under paragraph (b)(1) is less than 0.05 percent of the total fiscal year appropriation for ESG, that amount will be added to the allocation for the State in which the city or county is located.

(c) *Notification of allocation amount*. HUD will notify each State, metropolitan city, urban county, and territory that is eligible to receive an allocation under this section of the amount of its allocation.

Subpart B—Program Components and Eligible Activities

§ 576.100 General provisions and expenditure limits.

(a) ESG funds may be used for five program components: street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, and HMIS; as well as administrative activities. The five program components and the eligible activities that may be funded under each are set forth in §576.101 through §576.107. Eligible administrative activities are set forth in §576.108.

(b) The total amount of the recipient's fiscal year grant that may be used for street outreach and emergency shelter activities cannot exceed the greater of:

- (1) 60 percent of the recipient's fiscal year grant; or
- (2) The amount of Fiscal Year 2010 grant funds committed for homeless assistance activities.

(c) The total amount of ESG funds that may be used for administrative activities cannot exceed 7.5 percent of the recipient's fiscal year grant.

(d) Subject to the cost principles in OMB Circulars A-87 (2 CFR 225) and A-122 (2 CFR 230) and other requirements in this part, employee compensation and other overhead costs directly related to carrying out street outreach, emergency shelter, homelessness prevention, rapid re-housing, and HMIS are eligible costs of those program components. These costs are not subject to the expenditure limit in paragraph (c) of this section.

§ 576.101 Street outreach component.

(a) *Eligible costs*. Subject to the expenditure limit in §576.100(b), ESG funds may be used for costs of providing essential services necessary to reach out to unsheltered homeless people; connect them with emergency shelter, housing, or critical services; and provide urgent, nonfacility-based care to unsheltered homeless people who are unwilling or unable to access emergency shelter, housing, or an appropriate health facility. For the purposes of this section, the term "unsheltered homeless people" means individuals and families who qualify as homeless under paragraph (1)(i) of the "homeless" definition under §576.2. The eligible costs and requirements for essential services consist of:

- (1) *Engagement*. The costs of activities to locate, identify, and build relationships with unsheltered homeless people and engage them for the purpose of providing immediate support, intervention, and connections with homeless assistance programs and/or mainstream social services and housing programs. These activities consist of making an initial assessment of needs and eligibility; providing crisis counseling; addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries; and actively connecting and providing information and referrals to programs targeted to

homeless people and mainstream social services and housing programs, including emergency shelter, transitional housing, community-based services, permanent supportive housing, and rapid re-housing programs. Eligible costs include the cell phone costs of outreach workers during the performance of these activities.

(2) *Case management.* The cost of assessing housing and service needs, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant. Eligible services and activities are as follows: using the centralized or coordinated assessment system as required under §576.400(d); conducting the initial evaluation required under §576.401(a), including verifying and documenting eligibility; counseling; developing, securing and coordinating services; obtaining Federal, State, and local benefits; monitoring and evaluating program participant progress; providing information and referrals to other providers; and developing an individualized housing and service plan, including planning a path to permanent housing stability.

(3) *Emergency health services.*

(i) Eligible costs are for the direct outpatient treatment of medical conditions and are provided by licensed medical professionals operating in community-based settings, including streets, parks, and other places where unsheltered homeless people are living.

(ii) ESG funds may be used only for these services to the extent that other appropriate health services are inaccessible or unavailable within the area.

(iii) Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate emergency medical treatment; and providing medication and follow-up services.

(4) *Emergency mental health services.* (i) Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions operating in community-based settings, including streets, parks, and other places where unsheltered people are living.

(ii) ESG funds may be used only for these services to the extent that other appropriate mental health services are inaccessible or unavailable within the community.

(iii) Mental health services are the application of therapeutic processes to personal, family, situational, or occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances.

(iv) Eligible treatment consists of crisis interventions, the prescription of psychotropic medications, explanation about the use and management of medications, and combinations of therapeutic approaches to address multiple problems.

(5) *Transportation.* The transportation costs of travel by outreach workers, social workers, medical professionals, or other service providers are eligible, provided that this travel takes place during the provision of services eligible under this section. The costs of transporting unsheltered people to emergency shelters or other service facilities are also eligible. These costs include the following:

(i) The cost of a program participant's travel on public transportation;

(ii) If service workers use their own vehicles, mileage allowance for service workers to visit program participants;

(iii) The cost of purchasing or leasing a vehicle for the recipient or subrecipient in which staff transports program participants and/or staff serving program participants, and the cost of gas, insurance, taxes and maintenance for the vehicle; and

(iv) The travel costs of recipient or subrecipient staff to accompany or assist program participants to use public transportation.

(6) *Services for special populations.* ESG funds may be used to provide services for homeless youth, victim services, and services for people living with HIV/AIDS, so long as the costs of providing these services are eligible under paragraphs (a)(1) through (a)(5) of this section. The term *victim services* means services that assist program participants who are victims of domestic violence, dating violence, sexual assault, or stalking, including services offered by rape crisis centers and domestic violence shelters, and other organizations with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(b) *Minimum period of use.* The recipient or subrecipient must provide services to homeless individuals and families for at least the period during which ESG funds are provided.

(c) *Maintenance of effort.*

(1) If the recipient or subrecipient is a unit of general purpose local government, its ESG funds cannot be used to replace funds the local government provided for street outreach and emergency shelter services during the immediately preceding 12-month period, unless HUD determines that the unit of general purpose local government is in a severe financial deficit.

(2) Upon the recipient's request, HUD will determine whether the unit of general purpose local government is in a severe financial deficit, based on the recipient's demonstration of each of the following:

(i) The average poverty rate in the unit of general purpose local government's jurisdiction was equal to or greater than 125 percent of the average national poverty rate, during the calendar year for which the most recent data are available, as determined according to information from the U.S. Census Bureau.

(ii) The average per-capita income in the unit of general purpose local government's jurisdiction was less than 75 percent of the average national per-capita income, during the calendar year for which the most recent data are available, as determined according to information from the Census Bureau.

(iii) The unit of general purpose local government has a current annual budget deficit that requires a reduction in funding for services for homeless people.

(iv) The unit of general purpose local government has taken all reasonable steps to prevent a reduction in funding of services for homeless people. Reasonable steps may include steps to increase revenue generation, steps to maximize cost savings, or steps to reduce expenditures in areas other than services for homeless people.

§ 576.102 Emergency shelter component.

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(a) *General.* Subject to the expenditure limit in §576.100(b), ESG funds may be used for costs of providing essential services to homeless families and individuals in emergency shelters, renovating buildings to be used as emergency shelter for homeless families and individuals, and operating emergency shelters.

(1) *Essential services.* ESG funds may be used to provide essential services to individuals and families who are in an emergency shelter, as follows:

(i) *Case management.* The cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant is eligible. Component services and activities consist of:

(A) Using the centralized or coordinated assessment system as required under §576.400(d);

(B) Conducting the initial evaluation required under §576.401(a), including verifying and documenting eligibility;

(C) Counseling;

(D) Developing, securing, and coordinating services and obtaining Federal, State, and local benefits;

(E) Monitoring and evaluating program participant progress;

(F) Providing information and referrals to other providers;

(G) Providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault, and stalking; and

(H) Developing an individualized housing and service plan, including planning a path to permanent housing stability.

(ii) *Child care.* The costs of child care for program participants, including providing meals and snacks, and comprehensive and coordinated sets of appropriate developmental activities, are eligible. The children must be under the age of 13, unless they are disabled. Disabled children must be under the age of 18. The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

(iii) *Education services.* When necessary for the program participant to obtain and maintain housing, the costs of improving knowledge and basic educational skills are eligible. Services include instruction or training in consumer education, health education, substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED). Component services or activities are screening, assessment and testing; individual or group instruction; tutoring; provision of books, supplies and instructional material; counseling; and referral to community resources.

(iv) *Employment assistance and job training.* The costs of employment assistance and job training programs are eligible, including classroom, online, and/or computer instruction; on-the-job instruction; and services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of providing reasonable stipends to program participants in employment assistance and job training programs is an eligible cost. Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates. Services that assist individuals in securing employment consist of employment screening, assessment, or testing; structured job skills and job-seeking skills; special training and tutoring, including literacy training and prevocational training; books and instructional material; counseling or job coaching; and referral to community resources.

(v) *Outpatient health services.* Eligible costs are for the direct outpatient treatment of medical conditions and are provided by licensed medical professionals. Emergency Solutions Grant (ESG) funds may be used only for these services to the extent that other appropriate health services are unavailable within the community. Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate medical treatment, preventive medical care, and health maintenance services, including emergency medical services; providing medication and follow-up services; and providing preventive and noncosmetic dental care.

(vi) *Legal services.*

(A) Eligible costs are the hourly fees for legal advice and representation by attorneys licensed and in good standing with the bar association of the State in which the services are provided, and by person(s) under the supervision of the licensed attorney, regarding matters that interfere with the program participant's ability to obtain and retain housing.

(B) Emergency Solutions Grant (ESG) funds may be used only for these services to the extent that other appropriate legal services are unavailable or inaccessible within the community.

(C) Eligible subject matters are child support, guardianship, paternity, emancipation, and legal separation, orders of protection and other civil remedies for victims of domestic violence, dating violence, sexual assault, and stalking, appeal of veterans and public benefit claim denials, and the resolution of outstanding criminal warrants.

(D) Component services or activities may include client intake, preparation of cases for trial, provision of legal advice, representation at hearings, and counseling.

(E) Fees based on the actual service performed (i.e., fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a legal services provider and performs the services itself, the eligible costs are the subrecipient's employees' salaries and other costs necessary to perform the services.

(F) Legal services for immigration and citizenship matters and issues relating to mortgages are ineligible costs. Retainer fee arrangements and contingency fee arrangements are ineligible costs.

(vii) *Life skills training.* The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, substance use, and homelessness are eligible costs. These services must be necessary to assist the program participant to function independently in the community. Component life skills training are budgeting resources, managing money, managing a household, resolving conflict, shopping for food and needed items, improving nutrition, using public transportation, and parenting.

(viii) *Mental health services.*

(A) Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions.

(B) ESG funds may only be used for these services to the extent that other appropriate mental health services are unavailable or inaccessible within the community.

(C) Mental health services are the application of therapeutic processes to personal, family, situational, or occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances. Problem areas may include family and marital relationships, parent-child problems, or symptom management.

(D) Eligible treatment consists of crisis interventions; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.

(ix) *Substance abuse treatment services.*

(A) Eligible substance abuse treatment services are designed to prevent, reduce, eliminate, or deter relapse of substance abuse or addictive behaviors and are provided by licensed or certified professionals.

(B) ESG funds may only be used for these services to the extent that other appropriate substance abuse treatment services are unavailable or inaccessible within the community.

(C) Eligible treatment consists of client intake and assessment, and outpatient treatment for up to 30 days. Group and individual counseling and drug testing are eligible costs. Inpatient detoxification and other inpatient drug or alcohol treatment are not eligible costs.

(x) *Transportation.* Eligible costs consist of the transportation costs of a program participant's travel to and from medical care, employment, child care, or other eligible essential services facilities. These costs include the following:

(A) The cost of a program participant's travel on public transportation;

(B) If service workers use their own vehicles, mileage allowance for service workers to visit program participants;

(C) The cost of purchasing or leasing a vehicle for the recipient or subrecipient in which staff transports program participants and/or staff serving program participants, and the cost of gas, insurance, taxes, and maintenance for the vehicle; and

(D) The travel costs of recipient or subrecipient staff to accompany or assist program participants to use public transportation.

(xi) *Services for special populations.* ESG funds may be used to provide services for homeless youth, victim services, and services for people living with HIV/AIDS, so long as the costs of providing these services are eligible under paragraphs (a)(1)(i) through (a)(1)(x) of this section. The term *victim services* means services that assist program participants who are victims of domestic violence, dating violence, sexual assault, or stalking, including services offered by rape crisis centers and domestic violence shelters, and other organizations with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(2) *Renovation.* Eligible costs include labor, materials, tools, and other costs for renovation (including major rehabilitation of an emergency shelter or conversion of a building into an emergency shelter). The emergency shelter must be owned by a government entity or private nonprofit organization.

(3) *Shelter operations.* Eligible costs are the costs of maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, and supplies necessary for the operation of the emergency shelter. Where no appropriate emergency shelter is available for a homeless family or individual, eligible costs may also include a hotel or motel voucher for that family or individual.

(4) *Assistance required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).* Eligible costs are the costs of providing URA assistance under §576.408, including relocation payments and other assistance to persons displaced by a project assisted with ESG funds. Persons that receive URA assistance are not considered "program participants" for the purposes of this part, and relocation payments and other URA assistance are not considered "rental assistance" or "housing relocation and stabilization services" for the purposes of this part.

(b) *Prohibition against involuntary family separation.* The age, of a child under age 18 must not be used as a basis for denying any family's admission to an emergency shelter that uses Emergency Solutions Grant (ESG) funding or services and provides shelter to families with children under age 18.

(c) *Minimum period of use.*

(1) *Renovated buildings.* Each building renovated with ESG funds must be maintained as a shelter for homeless individuals and families for not less than a period of 3 or 10 years, depending on the type of renovation and the value of the building. The "value of the building" is the reasonable monetary value assigned to the building, such as the value assigned by an independent real estate appraiser. The minimum use period must begin on the date the building is first occupied by a homeless individual or family after the completed renovation. A minimum period of use of 10 years, required for major rehabilitation and conversion, must be enforced by a recorded deed or use restriction.

(i) *Major rehabilitation.* If the rehabilitation cost of an emergency shelter exceeds 75 percent of the value of the building before rehabilitation, the minimum period of use is 10 years.

(ii) *Conversion.* If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the minimum period of use is 10 years.

(iii) *Renovation other than major rehabilitation or conversion.* In all other cases where ESG funds are used for renovation, the minimum period of use is 3 years.

(2) *Essential services and shelter operations.* Where the recipient or subrecipient uses ESG funds solely for essential services or shelter operations, the recipient or subrecipient must provide services or shelter to homeless individuals and families at least for the period during which the ESG funds are provided. The recipient or subrecipient does not need to limit these services or shelter to a particular site or structure, so long as the site or structure serves the same type of persons originally served with the assistance (e.g., families with children, unaccompanied youth, disabled individuals, or victims of domestic violence) or serves homeless persons in the same area where the recipient or subrecipient originally provided the services or shelter.

(d) *Maintenance of effort.* The maintenance of effort requirements under §576.101(c), which apply to the use of ESG funds for essential services related to street outreach, also apply for the use of such funds for essential services related to emergency shelter.

§ 576.103 Homelessness prevention component.

ESG funds may be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance necessary to prevent an individual or family from moving into an emergency shelter or another place described in paragraph (1) of the "homeless" definition in §576.2. This assistance, referred to as homelessness prevention, may be provided to individuals and families who meet the criteria under the "at risk of homelessness" definition, or who meet the criteria in paragraph (2), (3), or (4) of the "homeless" definition in §576.2 and have an annual income below 30 percent of median family income for the area, as determined by HUD. The costs of homelessness prevention are only eligible to the extent that the assistance is necessary to

help the program participant regain stability in the program participant's current permanent housing or move into other permanent housing and achieve stability in that housing. Homelessness prevention must be provided in accordance with the housing relocation and stabilization services requirements in §576.105, the short-term and medium-term rental assistance requirements in §576.106, and the written standards and procedures established under §576.400.

§ 576.104 Rapid re-housing assistance component.

ESG funds may be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing. This assistance, referred to as rapid re-housing assistance, may be provided to program participants who meet the criteria under paragraph (1) of the "homeless" definition in §576.2 or who meet the criteria under paragraph (4) of the "homeless" definition and live in an emergency shelter or other place described in paragraph (1) of the "homeless" definition. The rapid re-housing assistance must be provided in accordance with the housing relocation and stabilization services requirements in §576.105, the short- and medium-term rental assistance requirements in §576.106, and the written standards and procedures established under §576.400.

§ 576.105 Housing relocation and stabilization services.

(a) *Financial assistance costs.* Subject to the general conditions under §576.103 and §576.104, ESG funds may be used to pay housing owners, utility companies, and other third parties for the following costs:

- (1) *Rental application fees.* ESG funds may pay for the rental housing application fee that is charged by the owner to all applicants.
- (2) *Security deposits.* ESG funds may pay for a security deposit that is equal to no more than 2 months' rent.
- (3) *Last month's rent.* If necessary to obtain housing for a program participant, the last month's rent may be paid from ESG funds to the owner of that housing at the time the owner is paid the security deposit and the first month's rent. This assistance must not exceed one month's rent and must be included in calculating the program participant's total rental assistance, which cannot exceed 24 months during any 3-year period.
- (4) *Utility deposits.* ESG funds may pay for a standard utility deposit required by the utility company for all customers for the utilities listed in paragraph (5) of this section.
- (5) *Utility payments.* ESG funds may pay for up to 24 months of utility payments per program participant, per service, including up to 6 months of utility payments in arrears, per service. A partial payment of a utility bill counts as one month. This assistance may only be provided if the program participant or a member of the same household has an account in his or her name with a utility company or proof of responsibility to make utility payments. Eligible utility services are gas, electric, water, and sewage. No program participant shall receive more than 24 months of utility assistance within any 3-year period.
- (6) *Moving costs.* ESG funds may pay for moving costs, such as truck rental or hiring a moving company. This assistance may include payment of temporary storage fees for up to 3 months, provided that the fees are accrued after the date the program participant begins receiving assistance under paragraph (b) of this section and before the program participant moves into permanent housing. Payment of temporary storage fees in arrears is not eligible.

(b) *Services costs.* Subject to the general restrictions under §576.103 and §576.104, ESG funds may be used to pay the costs of providing the following services:

- (1) *Housing search and placement.* Services or activities necessary to assist program participants in locating, obtaining, and retaining suitable permanent housing, include the following:
 - (i) Assessment of housing barriers, needs, and preferences;
 - (ii) Development of an action plan for locating housing;
 - (iii) Housing search;
 - (iv) Outreach to and negotiation with owners;
 - (v) Assistance with submitting rental applications and understanding leases;
 - (vi) Assessment of housing for compliance with Emergency Solutions Grant (ESG) requirements for habitability, lead-based paint, and rent reasonableness;

- (vii) Assistance with obtaining utilities and making moving arrangements; and
- (viii) Tenant counseling.

(2) *Housing stability case management.* ESG funds may be used to pay cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to facilitate housing stability for a program participant who resides in permanent housing or to assist a program participant in overcoming immediate barriers to obtaining housing. This assistance cannot exceed 30 days during the period the program participant is seeking permanent housing and cannot exceed 24 months during the period the program participant is living in permanent housing. Component services and activities consist of:

- (A) Using the centralized or coordinated assessment system as required under §576.400(d), to evaluate individuals and families applying for or receiving homelessness prevention or rapid re-housing assistance;
- (B) Conducting the initial evaluation required under §576.401(a), including verifying and documenting eligibility, for individuals and families applying for homelessness prevention or rapid re-housing assistance;
- (C) Counseling;
- (D) Developing, securing, and coordinating services and obtaining Federal, State, and local benefits;
- (E) Monitoring and evaluating program participant progress;
- (F) Providing information and referrals to other providers;
- (G) Developing an individualized housing and service plan, including planning a path to permanent housing stability; and
- (H) Conducting re-evaluations required under §576.401(b).

(3) *Mediation.* ESG funds may pay for mediation between the program participant and the owner or person(s) with whom the program participant is living, provided that the mediation is necessary to prevent the program participant from losing permanent housing in which the program participant currently resides.

(4) *Legal services.* ESG funds may pay for legal services, as set forth in §576.102(a)(1)(vi), except that the eligible subject matters also include landlord/tenant matters, and the services must be necessary to resolve a legal problem that prohibits the program participant from obtaining permanent housing or will likely result in the program participant losing the permanent housing in which the program participant currently resides.

(5) *Credit repair.* ESG funds may pay for credit counseling and other services necessary to assist program participants with critical skills related to household budgeting, managing money, accessing a free personal credit report, and resolving personal credit problems. This assistance does not include the payment or modification of a debt.

(c) *Maximum amounts and periods of assistance.* The recipient may set a maximum dollar amount that a program participant may receive for each type of financial assistance under paragraph (a) of this section. The recipient may also set a maximum period for which a program participant may receive any of the types of assistance or services under this section. However, except for housing stability case management, the total period for which any program participant may receive the services under paragraph (b) of this section must not exceed 24 months during any 3-year period. The limits on the assistance under this section apply to the total assistance an individual receives, either as an individual or as part of a family.

(d) *Use with other subsidies.* Financial assistance under paragraph (a) of this section cannot be provided to a program participant who is receiving the same type of assistance through other public sources or to a program participant who has been provided with replacement housing payments under the URA, during the period of time covered by the URA payments.

§ 576.106 Short-term and medium-term rental assistance.

(a) *General provisions.* Subject to the general conditions under §576.103 and §576.104, the recipient or subrecipient may provide a program participant with up to 24 months of rental assistance during any 3-year

period. This assistance may be short-term rental assistance, medium-term rental assistance, payment of rental arrears, or any combination of this assistance.

- (1) Short-term rental assistance is assistance for up to 3 months of rent.
- (2) Medium-term rental assistance is assistance for more than 3 months but not more than 24 months of rent.
- (3) Payment of rental arrears consists of a one-time payment for up to 6 months of rent in arrears, including any late fees on those arrears.
- (4) Rental assistance may be tenant-based or project-based, as set forth in paragraphs (h) and (i) of this section.

(b) *Discretion to set caps and conditions.* Subject to the requirements of this section, the recipient may set a maximum amount or percentage of rental assistance that a program participant may receive, a maximum number of months that a program participant may receive rental assistance, or a maximum number of times that a program participant may receive rental assistance. The recipient may also require program participants to share in the costs of rent.

(c) *Use with other subsidies.* Except for a one-time payment of rental arrears on the tenant's portion of the rental payment, rental assistance cannot be provided to a program participant who is receiving tenant-based rental assistance, or living in a housing unit receiving project-based rental assistance or operating assistance, through other public sources. Rental assistance may not be provided to a program participant who has been provided with replacement housing payments under the URA during the period of time covered by the URA payments.

(d) *Rent restrictions.*

- (1) Rental assistance cannot be provided unless the rent does not exceed the Fair Market Rent established by HUD, as provided under 24 CFR part 888, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.
- (2) For purposes of calculating rent under this section, the rent shall equal the sum of the total monthly rent for the unit, any fees required for occupancy under the lease (other than late fees and pet fees) and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.

(e) *Rental assistance agreement.* The recipient or subrecipient may make rental assistance payments only to an owner with whom the recipient or subrecipient has entered into a rental assistance agreement. The rental assistance agreement must set forth the terms under which rental assistance will be provided, including the requirements that apply under this section. The rental assistance agreement must provide that, during the term of the agreement, the owner must give the recipient or subrecipient a copy of any notice to the program participant to vacate the housing unit, or any complaint used under state or local law to commence an eviction action against the program participant.

(f) *Late payments.* The recipient or subrecipient must make timely payments to each owner in accordance with the rental assistance agreement. The rental assistance agreement must contain the same payment due date, grace period, and late payment penalty requirements as the program participant's lease. The recipient or subrecipient is solely responsible for paying late payment penalties that it incurs with non-ESG funds.

(g) *Lease.* Each program participant receiving rental assistance must have a legally binding, written lease for the rental unit, unless the assistance is solely for rental arrears. The lease must be between the owner and the program participant. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance under paragraph (i) of this section, the lease must have an initial term of one year.

(h) *Tenant-based rental assistance.*

- (1) A program participant who receives tenant-based rental assistance may select a housing unit in which to live and may move to another unit or building and continue to receive rental assistance, as long as the program participant continues to meet the program requirements.

(2) The recipient may require that all program participants live within a particular area for the period in which the rental assistance is provided.

(3) The rental assistance agreement with the owner must terminate and no further rental assistance payments under that agreement may be made if:

- (i) The program participant moves out of the housing unit for which the program participant has a lease;
- (ii) The lease terminates and is not renewed; or
- (iii) The program participant becomes ineligible to receive ESG rental assistance.

(i) *Project-based rental assistance.* If the recipient or subrecipient identifies a permanent housing unit that meets ESG requirements and becomes available before a program participant is identified to lease the unit, the recipient or subrecipient may enter into a rental assistance agreement with the owner to reserve the unit and subsidize its rent in accordance with the following requirements:

(1) The rental assistance agreement may cover one or more permanent housing units in the same building. Each unit covered by the rental assistance agreement ("assisted unit") may only be occupied by program participants, except as provided under paragraph (i)(4) of this section.

(2) The recipient or subrecipient may pay up to 100 percent of the first month's rent, provided that a program participant signs a lease and moves into the unit before the end of the month for which the first month's rent is paid. The rent paid before a program participant moves into the unit must not exceed the rent to be charged under the program participant's lease and must be included when determining that program participant's total rental assistance.

(3) The recipient or subrecipient may make monthly rental assistance payments only for each whole or partial month an assisted unit is leased to a program participant. When a program participant moves out of an assisted unit, the recipient or subrecipient may pay the next month's rent, *i.e.*, the first month's rent for a new program participant, as provided in paragraph (i)(2) of this section.

(4) The program participant's lease must not condition the term of occupancy to the provision of rental assistance payments. If the program participant is determined ineligible or reaches the maximum number of months over which rental assistance can be provided, the recipient or subrecipient must suspend or terminate the rental assistance payments for the unit. If the payments are suspended, the individual or family may remain in the assisted unit as permitted under the lease, and the recipient or subrecipient may resume payments if the individual or family again becomes eligible and needs further rental assistance. If the payments are terminated, the rental assistance may be transferred to another available unit in the same building, provided that the other unit meets all ESG requirements.

(5) The rental assistance agreement must have an initial term of one year. When a new program participant moves into an assisted unit, the term of the rental assistance agreement may be extended to cover the initial term of the program participant's lease. If the program participant's lease is renewed, the rental assistance agreement may be renewed or extended, as needed, up to the maximum number of months for which the program participant remains eligible. However, under no circumstances may the recipient or subrecipient commit ESG funds to be expended beyond the expenditure deadline in §576.203 or commit funds for a future ESG grant before the grant is awarded.

(j) *Changes in household composition.* The limits on the assistance under this section apply to the total assistance an individual receives, either as an individual or as part of a family.

§ 576.107 HMIS component.

(a) *Eligible costs.*

(1) The recipient or subrecipient may use ESG funds to pay the costs of contributing data to the HMIS designated by the Continuum of Care for the area, including the costs of:

- (i) Purchasing or leasing computer hardware;
- (ii) Purchasing software or software licenses;
- (iii) Purchasing or leasing equipment, including telephones, fax machines, and furniture;
- (iv) Obtaining technical support;
- (v) Leasing office space;
- (vi) Paying charges for electricity, gas, water, phone service, and high-speed data transmission necessary to operate or contribute data to the HMIS;

(vii) Paying salaries for operating HMIS, including:

- (A) Completing data entry;
- (B) Monitoring and reviewing data quality;
- (C) Completing data analysis;
- (D) Reporting to the HMIS Lead;
- (F) Training staff on using the HMIS or comparable database; and
- (G) Implementing and complying with HMIS requirements;

(viii) Paying costs of staff to travel to and attend HUD-sponsored and HUD-approved training on HMIS and programs authorized by Title IV of the McKinney-Vento Homeless Assistance Act;

(ix) Paying staff travel costs to conduct intake; and

(x) Paying participation fees charged by the HMIS Lead, if the recipient or subrecipient is not the HMIS Lead. The HMIS Lead is the entity designated by the Continuum of Care to operate the area's HMIS.

(2) If the recipient is the HMIS lead agency, as designated by the Continuum of Care in the most recent fiscal year Continuum of Care Homeless Assistance Grants Competition, it may also use ESG funds to pay the costs of:

(i) Hosting and maintaining HMIS software or data;

(ii) Backing up, recovering, or repairing HMIS software or data;

(iii) Upgrading, customizing, and enhancing the HMIS;

(iv) Integrating and warehousing data, including development of a data warehouse for use in aggregating data from subrecipients using multiple software systems;

(v) Administering the system;

(vi) Reporting to providers, the Continuum of Care, and HUD; and

(vii) Conducting training on using the system or a comparable database, including traveling to the training.

(3) If the subrecipient is a victim services provider or a legal services provider, it may use ESG funds to establish and operate a comparable database that collects client-level data over time (i.e., longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS.

(b) *General restrictions.* Activities funded under this section must comply with HUD's standards on participation, data collection, and reporting under a local HMIS.

§ 576.108 Administrative activities.

(a) *Eligible costs.* The recipient may use up to 7.5 percent of its ESG grant for the payment of administrative costs related to the planning and execution of ESG activities. This does not include staff and overhead costs directly related to carrying out activities eligible under §576.101 through §576.107, because those costs are eligible as part of those activities. Eligible administrative costs include:

(1) *General management, oversight and coordination.* Costs of overall program management, coordination, monitoring, and evaluation. These costs include, but are not limited to, necessary expenditures for the following:

(i) Salaries, wages, and related costs of the recipient's staff, the staff of subrecipients, or other staff engaged in program administration. In charging costs to this category, the recipient may either include the entire salary, wages, and related costs allocable to the program of each person whose *primary* responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The recipient may use only one of these methods for each fiscal year grant. Program administration assignments include the following:

- (A) Preparing program budgets and schedules, and amendments to those budgets and schedules;
- (B) Developing systems for assuring compliance with program requirements;

- (C) Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;
- (D) Monitoring program activities for progress and compliance with program requirements;
- (E) Preparing reports and other documents directly related to the program for submission to HUD;
- (F) Coordinating the resolution of audit and monitoring findings;
- (G) Evaluating program results against stated objectives; and
- (H) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i)(A) through (G) of this section.

- (ii) Travel costs incurred for monitoring of subrecipients;
 - (iii) Administrative services performed under third-party contracts or agreements, including general legal services, accounting services, and audit services; and
 - (iv) Other costs for goods and services required for administration of the program, including rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.
- (2) *Training on ESG requirements.* Costs of providing training on ESG requirements and attending HUD-sponsored ESG trainings.
- (3) *Consolidated plan.* Costs of preparing and amending the ESG and homelessness-related sections of the consolidated plan in accordance with ESG requirements and 24 CFR part 91.
- (4) *Environmental review.* Costs of carrying out the environmental review responsibilities under §576.407.

(b) Sharing requirement.

- (1) *States.* If the recipient is a State, the recipient must share its funds for administrative costs with its subrecipients that are units of general purpose local government. The amount shared must be reasonable under the circumstances. The recipient may share its funds for administrative costs with its subrecipients that are private nonprofit organizations.
- (2) *Territories, metropolitan cities, and urban counties.* If the recipient is a territory, metropolitan city, or urban county, the recipient may share its funds for administrative costs with its subrecipients.

§ 576.109 Indirect costs.

- (a) *In general.* ESG grant funds may be used to pay indirect costs in accordance with OMB Circular A-87 (2 CFR part 225), or A-122 (2 CFR part 230), as applicable.
- (b) *Allocation.* Indirect costs may be allocated to each eligible activity under §576.101 through §576.108, so long as that allocation is consistent with an indirect cost rate proposal developed in accordance with OMB Circular A-87 (2 CFR part 225), or A-122 (2 CFR part 230), as applicable.
- (c) *Expenditure limits.* The indirect costs charged to an activity subject to an expenditure limit under §576.100 must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limit.

Subpart C—Award and Use of Funds

§ 576.200 Submission requirements and grant approval.

- (a) *Application submission and approval.* In addition to meeting the application submission requirements in 24 CFR part 5, subpart K, each State, urban county, or metropolitan city must submit and obtain HUD approval of a consolidated plan in accordance with the requirements in 24 CFR part 91, and each territory must submit and obtain HUD approval of a consolidated plan in accordance with the requirements that apply to local governments under 24 CFR part 91. As provided under 24 CFR 85.12, HUD may impose special conditions or restrictions on a grant, if the recipient is determined to be high risk.
- (b) *Amendments.* The recipient must amend its approved consolidated plan in order to make a change in its allocation priorities; make a change in its method of distributing funds; carry out an activity not previously described in the plan; or change the purpose, scope, location, or beneficiaries of an activity. The amendment must be completed and submitted to HUD in accordance with the requirements under 24 CFR 91.505.

§ 576.201 Matching requirement.

(a) Required amount of matching contributions.

- (1) Except as provided under paragraphs (a)(2) and (a)(3) of this section, the recipient must make matching contributions to supplement the recipient's ESG program in an amount that equals the amount of ESG funds provided by HUD.
- (2) If the recipient is a State, the first \$100,000 of the fiscal year grant is not required to be matched. However, the recipient must transfer the benefit of this exception to its subrecipients that are least capable of providing the recipient with matching contributions.
- (3) This matching requirement does not apply if the recipient is a territory.

(b) Eligible sources of matching contributions.

- (1) Subject to the requirement for States under paragraph (a)(2) of this section, the recipient may require its subrecipients to make matching contributions consistent with this section to help meet the recipient's matching requirement.
- (2) Matching contributions may be obtained from any source, including any Federal source other than the ESG program, as well as state, local, and private sources. However, the following requirements apply to matching contributions from a Federal source of funds:
 - (i) The recipient must ensure the laws governing any funds to be used as matching contributions do not prohibit those funds from being used to match Emergency Solutions Grant (ESG) funds.
 - (ii) If ESG funds are used to satisfy the matching requirements of another Federal program, then funding from that program may not be used to satisfy the matching requirements under this section.

(c) Recognition of matching contributions.

- (1) In order to meet the matching requirement, the matching contributions must meet all requirements that apply to the ESG funds provided by HUD, except for the expenditure limits in §576.100.
- (2) The matching contributions must be provided after the date that HUD signs the grant agreement.
- (3) To count toward the required match for the recipient's fiscal year grant, cash contributions must be expended within the expenditure deadline in §576.203, and noncash contributions must be made within the expenditure deadline in §576.203.
- (4) Contributions used to match a previous ESG grant may not be used to match a subsequent ESG grant.
- (5) Contributions that have been or will be counted as satisfying a matching requirement of another Federal grant or award may not count as satisfying the matching requirement of this section.

(d) Eligible types of matching contributions. The matching requirement may be met by one or both of the following:

- (1) *Cash contributions.* Cash expended for allowable costs, as defined in OMB Circulars A-87 (2 CFR part 225) and A-122 (2 CFR part 230), of the recipient or subrecipient.
- (2) *Noncash contributions.* The value of any real property, equipment, goods, or services contributed to the recipient's or subrecipient's ESG program, provided that if the recipient or subrecipient had to pay for them with grant funds, the costs would have been allowable. Noncash contributions may also include the purchase value of any donated building.

(e) Calculating the amount of noncash contributions.

- (1) To determine the value of any donated material or building, or of any lease, the recipient must use a method reasonably calculated to establish the fair market value.
- (2) Services provided by individuals must be valued at rates consistent with those ordinarily paid for similar work in the recipient's or subrecipient's organization. If the recipient or subrecipient does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market.
- (3) Some noncash contributions are real property, equipment, goods, or services that, if the recipient or subrecipient had to pay for them with grant funds, the payments would have been indirect costs.

Matching credit for these contributions must be given only if the recipient or subrecipient has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of those contributions.

(f) *Costs paid by program income.* Costs paid by program income shall count toward meeting the recipient's matching requirements, provided the costs are eligible ESG costs that supplement the recipient's ESG program.

§ 576.202 Means of carrying out grant activities.

(a) *States.* If the recipient is a State, the recipient may use an amount consistent with the restrictions in §576.100 and §576.108 to carry out administrative activities through its employees or procurement contracts. If the recipient is a State, and has been identified as the HMIS lead by the Continuum of Care, the State may use funds to carry out HMIS activities set forth in §576.107(a)(2). The recipient must subgrant the remaining funds in its fiscal year grant to:

- (1) Units of general purpose local government in the State, which may include metropolitan cities and urban counties that receive ESG funds directly from HUD; or
- (2) Private nonprofit organizations, provided that for emergency shelter activities the recipient obtains a certification of approval from the unit of general purpose local government for the geographic area in which those activities are to be carried out.

(b) *Recipients other than States; subrecipients.* The recipient, if it is not a State, and all subrecipients may carry out all eligible activities through their employees, procurement contracts, or subgrants to private nonprofit organizations. If the recipient is an urban county, it may carry out activities through any of its member governments, so long as the county applies to its members the same requirements that are applicable to local government subrecipients under this part.

§ 576.203 Obligation, expenditure, and payment requirements.

(a) *Obligation of funds.*

(1) *Funds allocated to States.*

- (i) Within 60 days from the date that HUD signs the grant agreement with the State (or grant amendment for reallocated funds), the recipient must obligate the entire grant, except the amount for its administrative costs. This requirement is met by a subgrant agreement with, or a letter of award requiring payment from the grant to, a subrecipient.
- (ii) Within 120 days after the date that the State obligates its funds to a unit of general purpose local government, the subrecipient must obligate all of those funds by a subgrant agreement with, or a letter of award requiring payment to, a private nonprofit organization; a procurement contract; or the written designation of a department within the government of the subrecipient to directly carry out an eligible activity.

(2) *Funds allocated to metropolitan cities, urban counties, and territories.* Within 180 days after the date that HUD signs the grant agreement (or a grant amendment for reallocation of funds) with the metropolitan city, urban county, or territory, the recipient must obligate all the grant amount, except the amount for its administrative costs. This requirement is met by an agreement with, or a letter of award requiring payment to, a subrecipient; a procurement contract; or a written designation of a department within the government of the recipient to directly carry out an eligible activity. If the recipient is an urban county, this requirement may also be met with an agreement with, or letter of award requiring payment to, a member government, which has designated a department to directly carry out an eligible activity.

(b) *Expenditures.* The recipient must draw down and expend funds from each year's grant not less than once during each quarter of the recipient's program year. All of the recipient's grant must be expended for eligible activity costs within 24 months after the date HUD signs the grant agreement with the recipient. For the purposes of this paragraph, expenditure means either an actual cash disbursement for a direct charge for a good or service or an indirect cost or the accrual of a direct charge for a good or service or an indirect cost.

(c) *Payments to subrecipients.* The recipient must pay each subrecipient for allowable costs within 30 days after receiving the subrecipient's complete payment request. This requirement also applies to each subrecipient that is a unit of general purpose local government.

Subpart D—Reallocations

§ 576.300 In general.

- (1) Funds not awarded by HUD due to failure by the recipient to submit and obtain HUD approval of a consolidated plan will be reallocated in accordance with §§576.301 through 576.303.
- (2) Recaptured funds will be awarded by formula. In October and April each year, HUD will determine if the amount of recaptured funds is at least 30 percent of the most recent fiscal year appropriation. If so, HUD will amend all existing grants and reallocate the funds. If the amount is less than 30 percent of the most recent fiscal year appropriation, the funds will be reallocated in conjunction with the next fiscal year's allocation of funding.

§ 576.301 Metropolitan cities and urban counties.

Grant funds returned by a metropolitan city or urban county will be reallocated as follows:

- (a) *Eligible recipient.* HUD will make the funds available to the State in which the city or county is located.
- (b) *Notification of availability.* HUD will promptly notify the State of the availability of the amounts to be reallocated.
- (c) *Application requirement.* Within 45 days after the date of notification, the State must submit to HUD a substantial amendment to its consolidated plan in accordance with 24 CFR part 91.
- (d) *Restrictions that apply to reallocated amounts.* The same requirements that apply to grant funds allocated under §576.3 apply to grant funds reallocated under this section, except that the State must distribute the reallocated funds:
 - (1) To private nonprofit organizations and units of general purpose local government in the geographic area in which the metropolitan city or urban county is located;
 - (2) If funds remain, to private nonprofit organizations and units of general purpose local government located throughout the State.

§ 576.302 States.

Grant funds returned by a State will be reallocated as follows:

- (a) *Eligible recipients.* HUD will make the funds available:
 - (1) To metropolitan cities and urban counties in the State that were not allocated funds under §576.3 because the amount they would have been allocated did not meet the minimum requirement under §576.3(b)(2);
 - (2) If funds remain, to county governments in the State other than urban counties;
 - (3) Then, if funds remain, to metropolitan cities and urban counties in the State that were allocated funds under §576.3.
- (b) *Notification of availability.* HUD will notify eligible recipients of the availability of the funds by a notification letter or Federal Register notice, which will specify how the awards of funds will be made.
- (c) *Application requirements.* Within 45 days after the date of notification, the eligible recipient must submit to HUD:
 - (1) A substantial amendment to its approved consolidated plan in accordance with 24 CFR part 91; or
 - (2) If the eligible recipient does not have an approved consolidated plan, an abbreviated consolidated plan that meets the requirements in the Federal Register notice or notification letter from HUD.
- (d) *Restrictions that apply to reallocated amounts.* The same requirements that apply to grant funds allocated under §576.3 apply to grant funds reallocated under this section.

§ 576.303 Territories.

(a) *General.* Grant funds returned by a territory will be reallocated to other territories, then if funds remain, to States.

(b) *Allocation method.* The funds will be allocated as follows:

(1) For territories, the funds will be allocated among the territories in direct proportion with each territory's share of the total population of all of the eligible territories. If HUD determines that a territory failed to spend its funds in accordance with ESG requirements, then HUD may exclude the territory from the allocation of reallocation amounts under this section.

(2) For States, the funds will be allocated to each State in direct proportion with each State's share of the total amount of funds allocated to States under §576.3.

(c) *Notification of availability.* HUD will notify eligible recipients of the availability of the fund by a letter or Federal Register notice, which will specify how the awards of funds will be made.

(d) *Application requirements.* Within 45 days after the date of notification, the eligible recipient must submit to HUD a substantial amendment to its consolidated plan in accordance with 24 CFR part 91.

(e) *Restrictions that apply to reallocated amounts.* The same requirements that apply to grant funds allocated under §576.3 apply to grant funds reallocated under this section.

Subpart E—Program Requirements

§ 576.400 Area-wide systems coordination requirements.

(a) *Consultation with Continuums of Care.* The recipient must consult with each Continuum of Care that serves the recipient's jurisdiction in determining how to allocate ESG funds each program year; developing the performance standards for, and evaluating the outcomes of, projects and activities assisted by ESG funds; and developing funding, policies, and procedures for the administration and operation of the HMIS.

(b) *Coordination with other targeted homeless services.* The recipient and its subrecipients must coordinate and integrate, to the maximum extent practicable, ESG-funded activities with other programs targeted to homeless people in the area covered by the Continuum of Care or area over which the services are coordinated to provide a strategic, community-wide system to prevent and end homelessness for that area. These programs include:

- (1) Shelter Plus Care Program (24 CFR part 582);
- (2) Supportive Housing Program (24 CFR part 583);
- (3) Section 8 Moderate Rehabilitation Program for Single Room Occupancy Program for Homeless Individuals (24 CFR part 882);
- (4) HUD—Veterans Affairs Supportive Housing (HUD—VASH) (division K, title II, Consolidated Appropriations Act, 2008, Pub. L. 110–161 (2007), 73 FR 25026 (May 6, 2008));
- (5) Education for Homeless Children and Youth Grants for State and Local Activities (title VII–B of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.));
- (6) Grants for the Benefit of Homeless Individuals (section 506 of the Public Health Services Act (42 U.S.C. 290aa–5));
- (7) Healthcare for the Homeless (42 CFR part 51c);
- (8) Programs for Runaway and Homeless Youth (Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.));
- (9) Projects for Assistance in Transition from Homelessness (part C of title V of the Public Health Service Act (42 U.S.C. 290cc–21 et seq.));
- (10) Services in Supportive Housing Grants (section 520A of the Public Health Service Act);
- (11) Emergency Food and Shelter Program (title III of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11331 et seq.));
- (12) Transitional Housing Assistance Grants for Victims of Sexual Assault, Domestic Violence, Dating Violence, and Stalking Program (section 40299 of the Violent Crime Control and Law Enforcement Act (42 U.S.C. 13975));
- (13) Homeless Veterans Reintegration Program (section 5(a)(1)) of the Homeless Veterans Comprehensive Assistance Act (38 U.S.C. 2021);
- (14) Domiciliary Care for Homeless Veterans Program (38 U.S.C. 2043);
- (15) VA Homeless Providers Grant and Per Diem Program (38 CFR part 61);

- (16) Health Care for Homeless Veterans Program (38 U.S.C. 2031);
- (17) Homeless Veterans Dental Program (38 U.S.C. 2062);
- (18) Supportive Services for Veteran Families Program (38 CFR part 62); and
- (19) Veteran Justice Outreach Initiative (38 U.S.C. 2031).

(c) *System and program coordination with mainstream resources.* The recipient and its subrecipients must coordinate and integrate, to the maximum extent practicable, ESG-funded activities with mainstream housing, health, social services, employment, education, and youth programs for which families and individuals at risk of homelessness and homeless individuals and families may be eligible. Examples of these programs include:

- (1) Public housing programs assisted under section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g) (24 CFR parts 905, 968, and 990);
- (2) Housing programs receiving tenant-based or project-based assistance under section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f) (respectively 24 CFR parts 982 and 983);
- (3) Supportive Housing for Persons with Disabilities (Section 811) (24 CFR part 891);
- (4) HOME Investment Partnerships Program (24 CFR part 92);
- (5) Temporary Assistance for Needy Families (TANF) (45 CFR parts 260–265);
- (6) Health Center Program (42 CFR part 51c);
- (7) State Children's Health Insurance Program (42 CFR part 457);
- (8) Head Start (45 CFR chapter XIII, subchapter B);
- (9) Mental Health and Substance Abuse Block Grants (45 CFR part 96); and
- (10) Services funded under the Workforce Investment Act (29 U.S.C. 2801 et seq.).

(d) *Centralized or coordinated assessment.* Once the Continuum of Care has developed a centralized assessment system or a coordinated assessment system in accordance with requirements to be established by HUD, each ESG-funded program or project within the Continuum of Care's area must use that assessment system. The recipient and subrecipient must work with the Continuum of Care to ensure the screening, assessment and referral of program participants are consistent with the written standards required by paragraph (e) of this section. A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system.

(e) *Written standards for providing ESG assistance.*

- (1) If the recipient is a metropolitan city, urban county, or territory, the recipient must have written standards for providing Emergency Solutions Grant (ESG) assistance and must consistently apply those standards for all program participants. The recipient must describe these standards in its consolidated plan.
- (2) If the recipient is a state:
 - (i) The recipient must establish and consistently apply, or require that its subrecipients establish and consistently apply, written standards for providing ESG assistance. If the written standards are established by the subrecipients, the recipient may require these written standards to be:
 - (A) Established for each area covered by a Continuum of Care or area over which the services are coordinated and followed by each subrecipient providing assistance in that area; or
 - (B) Established by each subrecipient and applied consistently within the subrecipient's program.
 - (ii) Written standards developed by the state must be included in the state's Consolidated Plan. If the written standards are developed by its subrecipients, the recipient must describe its requirements for the establishment and implementation of these standards in the state's Consolidated Plan.
- (3) At a minimum these written standards must include:
 - (i) Standard policies and procedures for evaluating individuals' and families' eligibility for assistance under Emergency Solutions Grant (ESG);
 - (ii) Standards for targeting and providing essential services related to street outreach;
 - (iii) Policies and procedures for admission, diversion, referral, and discharge by emergency shelters assisted under ESG, including standards regarding length of stay, if any, and

safeguards to meet the safety and shelter needs of special populations, e.g., victims of domestic violence, dating violence, sexual assault, and stalking; and individuals and families who have the highest barriers to housing and are likely to be homeless the longest;

(iv) Policies and procedures for assessing, prioritizing, and reassessing individuals' and families' needs for essential services related to emergency shelter;

(v) Policies and procedures for coordination among emergency shelter providers, essential services providers, homelessness prevention, and rapid re-housing assistance providers; other homeless assistance providers; and mainstream service and housing providers (see §576.400(b) and (c) for a list of programs with which ESG-funded activities must be coordinated and integrated to the maximum extent practicable);

(vi) Policies and procedures for determining and prioritizing which eligible families and individuals will receive homelessness prevention assistance and which eligible families and individuals will receive rapid re-housing assistance;

(vii) Standards for determining what percentage or amount of rent and utilities costs each program participant must pay while receiving homelessness prevention or rapid re-housing assistance;

(viii) Standards for determining how long a particular program participant will be provided with rental assistance and whether and how the amount of that assistance will be adjusted over time; and

(ix) Standards for determining the type, amount, and duration of housing stabilization and/or relocation services to provide to a program participant, including the limits, if any, on the homelessness prevention or rapid re-housing assistance that each program participant may receive, such as the maximum amount of assistance, maximum number of months the program participant receive assistance; or the maximum number of times the program participant may receive assistance.

(f) *Participation in HMIS.* The recipient must ensure that data on all persons served and all activities assisted under ESG are entered into the applicable community-wide HMIS in the area in which those persons and activities are located, or a comparable database, in accordance with HUD's standards on participation, data collection, and reporting under a local HMIS. If the subrecipient is a victim service provider or a legal services provider, it may use a comparable database that collects client-level data over time (i.e., longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS.

§ 576.401 Evaluation of program participant eligibility and needs.

(a) *Evaluations.* The recipient or its subrecipient must conduct an initial evaluation to determine the eligibility of each individual or family's eligibility for ESG assistance and the amount and types of assistance the individual or family needs to regain stability in permanent housing. These evaluations must be conducted in accordance with the centralized or coordinated assessment requirements set forth under §576.400(d) and the written standards established under §576.400(e).

(b) *Re-evaluations for homelessness prevention and rapid re-housing assistance.*

(1) The recipient or subrecipient must re-evaluate the program participant's eligibility and the types and amounts of assistance the program participant needs not less than once every 3 months for program participants receiving homelessness prevention assistance, and not less than once annually for program participants receiving rapid re-housing assistance. At a minimum, each re-evaluation of eligibility must establish that:

- (i) The program participant does not have an annual income that exceeds 30 percent of median family income for the area, as determined by HUD; and
- (ii) The program participant lacks sufficient resources and support networks necessary to retain housing without ESG assistance.

(2) The recipient or subrecipient may require each program participant receiving homelessness prevention or rapid re-housing assistance to notify the recipient or subrecipient regarding changes in the program participant's income or other circumstances (e.g., changes in household composition) that affect the program participant's need for assistance under ESG. When notified of a relevant change, the

recipient or subrecipient must re-evaluate the program participant's eligibility and the amount and types of assistance the program participant needs.

(c) *Annual income.* When determining the annual income of an individual or family, the recipient or subrecipient must use the standard for calculating annual income under 24 CFR 5.609.

(d) *Connecting program participants to mainstream and other resources.* The recipient and its subrecipients must assist each program participant, as needed, to obtain:

(1) Appropriate supportive services, including assistance in obtaining permanent housing, medical health treatment, mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(2) Other Federal, State, local, and private assistance available to assist the program participant in obtaining housing stability, including:

(i) Medicaid (42 CFR chapter IV, subchapter C);

(ii) Supplemental Nutrition Assistance Program (7 CFR parts 271–283);

(iii) Women, Infants and Children (WIC) (7 CFR part 246);

(iv) Federal-State Unemployment Insurance Program (20 CFR parts 601–603, 606, 609, 614–617, 625, 640, 650);

(v) Social Security Disability Insurance (SSDI) (20 CFR part 404);

(vi) Supplemental Security Income (SSI) (20 CFR part 416);

(vii) Child and Adult Care Food Program (42 U.S.C. 1766(t) (7 CFR part 226));

(viii) Other assistance available under the programs listed in §576.400(c).

(e) *Housing stability case management.*

(1) While providing homelessness prevention or rapid re-housing assistance to a program participant, the recipient or subrecipient must:

(i) Require the program participant to meet with a case manager not less than once per month to assist the program participant in ensuring long-term housing stability; and

(ii) Develop a plan to assist the program participant to retain permanent housing after the ESG assistance ends, taking into account all relevant considerations, such as the program participant's current or expected income and expenses; other public or private assistance for which the program participant will be eligible and likely to receive; and the relative affordability of available housing in the area.

(2) The recipient or subrecipient is exempt from the requirement under paragraph (e)(1)(i) of this section if the Violence Against Women Act of 1994 (42 U.S.C. 13701 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits that recipient or subrecipient from making its shelter or housing conditional on the participant's acceptance of services.

§ 576.402 Terminating assistance.

(a) *In general.* If a program participant violates program requirements, the recipient or subrecipient may terminate the assistance in accordance with a formal process established by the recipient or subrecipient that recognizes the rights of individuals affected. The recipient or subrecipient must exercise judgment and examine all extenuating circumstances in determining when violations warrant termination so that a program participant's assistance is terminated only in the most severe cases.

(b) *Program participants receiving rental assistance or housing relocation and stabilization services.* To terminate rental assistance or housing relocation and stabilization services to a program participant, the required formal process, at a minimum, must consist of:

(1) Written notice to the program participant containing a clear statement of the reasons for termination;

(2) A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(3) Prompt written notice of the final decision to the program participant.

(c) *Ability to provide further assistance.* Termination under this section does not bar the recipient or subrecipient from providing further assistance at a later date to the same family or individual.

§ 576.403 Shelter and housing standards.

(a) *Lead-based paint remediation and disclosure.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations in 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to all shelters assisted under ESG program and all housing occupied by program participants.

(b) *Minimum standards for emergency shelters.* Any building for which Emergency Solutions Grant (ESG) funds are used for conversion, major rehabilitation, or other renovation, must meet state or local government safety and sanitation standards, as applicable, and the following minimum safety, sanitation, and privacy standards. Any emergency shelter that receives assistance for shelter operations must also meet the following minimum safety, sanitation, and privacy standards. The recipient may also establish standards that exceed or add to these minimum standards.

- (1) *Structure and materials.* The shelter building must be structurally sound to protect residents from the elements and not pose any threat to health and safety of the residents. Any renovation (including major rehabilitation and conversion) carried out with ESG assistance must use Energy Star and WaterSense products and appliances.
- (2) *Access.* The shelter must be accessible in accordance with Section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3601 *et seq.*) and implementing regulations at 24 CFR part 100; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131 *et seq.*) and 28 CFR part 35; where applicable.
- (3) *Space and security.* Except where the shelter is intended for day use only, the shelter must provide each program participant in the shelter with an acceptable place to sleep and adequate space and security for themselves and their belongings.
- (4) *Interior air quality.* Each room or space within the shelter must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.
- (5) *Water supply.* The shelter's water supply must be free of contamination.
- (6) *Sanitary facilities.* Each program participant in the shelter must have access to sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.
- (7) *Thermal environment.* The shelter must have any necessary heating/cooling facilities in proper operating condition.
- (8) *Illumination and electricity.* The shelter must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the shelter.
- (9) *Food preparation.* Food preparation areas, if any, must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.
- (10) *Sanitary conditions.* The shelter must be maintained in a sanitary condition.
- (11) *Fire safety.* There must be at least one working smoke detector in each occupied unit of the shelter. Where possible, smoke detectors must be located near sleeping areas. The fire alarm system must be designed for hearing-impaired residents. All public areas of the shelter must have at least one working smoke detector. There must also be a second means of exiting the building in the event of fire or other emergency.

(c) *Minimum standards for permanent housing.* The recipient or subrecipient cannot use ESG funds to help a program participant remain or move into housing that does not meet the minimum habitability standards provided in this paragraph (c). The recipient may also establish standards that exceed or add to these minimum standards.

- (1) *Structure and materials.* The structures must be structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.
- (2) *Space and security.* Each resident must be provided adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.
- (3) *Interior air quality.* Each room or space must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

- (4) *Water supply.* The water supply must be free from contamination.
- (5) *Sanitary facilities.* Residents must have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.
- (6) *Thermal environment.* The housing must have any necessary heating/cooling facilities in proper operating condition.
- (7) *Illumination and electricity.* The structure must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the structure.
- (8) *Food preparation.* All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.
- (9) *Sanitary conditions.* The housing must be maintained in a sanitary condition.
- (10) *Fire safety.*
- (i) There must be a second means of exiting the building in the event of fire or other emergency.
 - (ii) Each unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.
 - (iii) The public areas of all housing must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

§ 576.404 Conflicts of interest.

(a) *Organizational conflicts of interest.* The provision of any type or amount of ESG assistance may not be conditioned on an individual's or family's acceptance or occupancy of emergency shelter or housing owned by the recipient, the subrecipient, or a parent or subsidiary of the subrecipient. No subrecipient may, with respect to individuals or families occupying housing owned by the subrecipient, or any parent or subsidiary of the subrecipient, carry out the initial evaluation required under §576.401 or administer homelessness prevention assistance under §576.103.

(b) *Individual conflicts of interest.* For the procurement of goods and services, the recipient and its subrecipients must comply with the codes of conduct and conflict of interest requirements under 24 CFR 85.36 (for governments) and 24 CFR 84.42 (for private nonprofit organizations). For all other transactions and activities, the following restrictions apply:

(1) *Conflicts prohibited.* No person described in paragraph (b)(2) of this section who exercises or has exercised any functions or responsibilities with respect to activities assisted under the ESG program, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under the program, may obtain a financial interest or benefit from an assisted activity; have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity; or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or during the one-year period following his or her tenure.

(2) *Persons covered.* The conflict-of-interest provisions of paragraph (b)(1) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients.

(3) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of this subsection on a case-by-case basis, taking into account the cumulative effects of the criteria in paragraph (b)(3)(ii) of this section, provided that the recipient has satisfactorily met the threshold requirements of paragraph (b)(3)(i) of this section.

(i) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(A) If the recipient or subrecipient is a government, disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(B) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate state or local law.

(ii) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements under paragraph (b)(3)(i) of this section, HUD must conclude that the exception will serve to further the purposes of the ESG program and the effective and efficient administration of the recipient's or subrecipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

- (A) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;
- (B) Whether an opportunity was provided for open competitive bidding or negotiation;
- (C) Whether the affected person has withdrawn from his or her functions, responsibilities or the decision-making process with respect to the specific activity in question;
- (D) Whether the interest or benefit was present before the affected person was in the position described in paragraph (b)(1) of this section;
- (E) Whether undue hardship results to the recipient, the subrecipient, or the person affected, when weighed against the public interest served by avoiding the prohibited conflict; and
- (F) Any other relevant considerations.

(c) *Contractors.* All contractors of the recipient or subrecipient must comply with the same requirements that apply to subrecipients under this section.

§ 576.405 Homeless participation.

(a) Unless the recipient is a State, the recipient must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policy-making entity of the recipient, to the extent that the entity considers and makes policies and decisions regarding any facilities, services, or other assistance that receive funding under Emergency Solutions Grant (ESG).

(b) If the recipient is unable to meet requirement under paragraph (a), it must instead develop and implement a plan to consult with homeless or formerly homeless individuals in considering and making policies and decisions regarding any facilities, services, or other assistance that receive funding under Emergency Solutions Grant (ESG). The plan must be included in the annual action plan required under 24 CFR 91.220.

(c) To the maximum extent practicable, the recipient or subrecipient must involve homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under ESG, in providing services assisted under ESG, and in providing services for occupants of facilities assisted under ESG. This involvement may include employment or volunteer services.

§ 576.406 Faith-based activities.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to receive ESG funds. Neither the Federal Government nor a State or local government receiving funds under ESG shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the ESG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under ESG. If an organization conducts these activities, the activities must be offered separately, in time or location, from the programs or services funded under ESG, and participation must be voluntary for program participants.

(c) Any religious organization that receives ESG funds retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that the religious organization does not use direct ESG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide ESG-funded services, without removing religious art,

Exhibit D.2- ESG Regulations (24 CFR Part 576)

icons, scriptures, or other religious symbols. In addition, an ESG-funded religious organization retains its authority over its internal governance, and the organization may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) An organization that receives ESG funds shall not, in providing ESG assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

(e) ESG funds may not be used for the rehabilitation of structures to the extent that those structures are used for inherently religious activities. Solutions ESG funds may be used for the rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the ESG program. Where a structure is used for both eligible and inherently religious activities, ESG funds may not exceed the cost of those portions of the rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to ESG funds. Sanctuaries, chapels, or other rooms that an ESG-funded religious congregation uses as its principal place of worship, however, are ineligible for funded improvements under the program. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).

(f) If the recipient or a subrecipient that is a local government voluntarily contributes its own funds to supplement federally funded activities, the recipient or subrecipient has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

§ 576.407 Other Federal requirements.

(a) *General.* The requirements in 24 CFR part 5, subpart A are applicable, including the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a). Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR part 135 apply, except that homeless individuals have priority over other Section 3 residents in accordance with §576.405(c).

(b) *Affirmative outreach.* The recipient or subrecipient must make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. If it is unlikely that the procedures that the recipient or subrecipient intends to use to make known the availability of the facilities, assistance, and services will reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the recipient or subrecipient must establish additional procedures that ensure that those persons are made aware of the facilities, assistance, and services. The recipient and its subrecipients must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Consistent with Title VI and Executive Order 13166, recipients and subrecipients are also required to take reasonable steps to ensure meaningful access to programs and activities for limited English proficiency (LEP) persons.

(c) *Uniform Administrative Requirements.* The requirements of 24 CFR part 85 apply to the recipient and subrecipients that are units of general purpose local government, except that 24 CFR 85.24 and 85.42 do not apply, and program income is to be used as match under 24 CFR 85.25(g). The requirements of 24 CFR part 84 apply to subrecipients that are private nonprofit organizations, except that 24 CFR 84.23 and 84.53 do not apply, and program income is to be used as the nonfederal share under 24 CFR 84.24(b). These regulations include allowable costs and non-Federal audit requirements.

(d) *Environmental review responsibilities.*

(1) Activities under this part are subject to environmental review by HUD under 24 CFR part 50. The recipient shall supply all available, relevant information necessary for HUD to perform for each property any environmental review required by 24 CFR part 50. The recipient also shall carry out mitigating measures required by HUD or select alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement (EIS).

(2) The recipient or subrecipient, or any contractor of the recipient or subrecipient, may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for eligible activities under this part, until HUD has

performed an environmental review under 24 CFR part 50 and the recipient has received HUD approval of the property.

(e) *Davis-Bacon Act*. The provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a-5) do not apply to the ESG program.

(f) *Procurement of Recovered Materials*. The recipient and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 576.408 Displacement, relocation, and acquisition.

(a) *Minimizing displacement*. Consistent with the other goals and objectives of Emergency Solutions Grant (ESG), the recipient and its subrecipients must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under Emergency Solutions Grant (ESG).

(b) *Temporary relocation not permitted*. No tenant-occupant of housing (a dwelling unit) that is converted into an emergency shelter may be required to relocate temporarily for a project assisted with ESG funds, or be required to move to another unit in the same building/complex. When a tenant moves for a project assisted with ESG funds under conditions that trigger the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 42 U.S.C. 4601-4655, as described in paragraph (c) of this section, the tenant should be treated as permanently displaced and offered relocation assistance and payments consistent with that paragraph.

(c) *Relocation assistance for displaced persons*. (1) *In general*. A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with, the URA and 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601 *et seq.*). Whenever possible, minority persons shall be given reasonable opportunities to relocate to comparable and suitable decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require providing a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. (See 49 CFR 24.205(c)(2)(ii)(D).) As required by Section 504 of the Rehabilitation Act (29 U.S.C. 794) and 49 CFR part 24, replacement dwellings must also contain the accessibility features needed by displaced persons with disabilities.

(2) Displaced Person.

(i) For purposes of paragraph (c) of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm, including any corporation, partnership, or association) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under the ESG program. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(A) After the owner (or person in control of the site) issues a notice to move permanently from the property or refuses to renew an expiring lease, if the move occurs on or after:

(I) The date of the submission by the recipient (or subrecipient, as applicable) of an application for assistance to HUD (or the recipient, as applicable) that is later approved and funded if the recipient (or subrecipient, as applicable) has site control as evidenced by a deed, sales contract, or option contract to acquire the property; or

(II) The date on which the recipient (or subrecipient, as applicable) selects the applicable site, if the recipient (or subrecipient, as applicable) does not have site

- control at the time of the application, provided that the recipient (or subrecipient, as applicable) eventually obtains control over the site;
- (B) Before the date described in paragraph (c)(2)(i)(A) of this section, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or
- (C) By a tenant-occupant of a dwelling unit and the tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project.

(ii) Notwithstanding paragraph (c)(2)(i) of this section, a person does not qualify as a displaced person if:

- (A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement; violation of applicable Federal, State or local law, or other good cause; and the recipient determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.
- (B) The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced), and the fact that the person would not qualify as a "displaced person" (or for any assistance under this section) as a result of the project;
- (C) The person is ineligible under 49 CFR 24.2(a)(9)(ii); or
- (D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) The recipient or subrecipient may, at any time, request that HUD to determine whether a displacement is or would be covered by this rule.

(3) *Initiation of negotiations.* For purposes of determining the type of replacement housing payment assistance to be provided to a displaced person pursuant to this section:

- (i) If the displacement is the direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, "initiation of negotiations" means the execution of the agreement between the recipient and the subrecipient or the agreement between the recipient (or subrecipient, as applicable) and the person owning or controlling the property;
- (ii) If site control is only evidenced by an option contract to acquire the property, the "initiation of negotiations" does not become effective until the execution of a written agreement that creates a legally enforceable commitment to proceed with the purchase, such as a sales contract.

(d) *Real property acquisition requirements.* The acquisition of real property, whether funded privately or publicly, for a project assisted with Emergency Solutions Grant (ESG) funds is subject to the URA and Federal governmentwide regulations at 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the recipient's (or subrecipient's, if applicable) determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the recipient under 49 CFR 24.10. A low-income person who disagrees with the recipient's determination may submit a written request for review of that determination by the appropriate HUD field office.

Subpart F—Grant Administration

§ 576.500 Recordkeeping and reporting requirements.

(a) *In general.* The recipient must have policies and procedures to ensure the requirements of this part are met. The policies and procedures must be established in writing and implemented by the recipient and its subrecipients to ensure that ESG funds are used in accordance with the requirements. In addition, sufficient records must be established and maintained to enable the recipient and HUD to determine whether ESG requirements are being met.

(b) *Homeless status.* The recipient must maintain and follow written intake procedures to ensure compliance with the homeless definition in §576.2. The procedures must require documentation at intake of the evidence relied upon to establish and verify homeless status. The procedures must establish the order of priority for obtaining evidence as third-party documentation first, intake worker observations second, and certification from the person seeking assistance third. However, lack of third-party documentation must not prevent an individual or family from being immediately admitted to emergency shelter, receiving street outreach services, or being immediately admitted to shelter or receiving services provided by a victim service provider. Records contained in an HMIS or comparable database used by victim service or legal service providers are acceptable evidence of third-party documentation and intake worker observations if the HMIS retains an auditable history of all entries, including the person who entered the data, the date of entry, and the change made; and if the HMIS prevents overrides or changes of the dates on which entries are made.

(1) If the individual or family qualifies as homeless under paragraph (1)(i) or (ii) of the homeless definition in §576.2, acceptable evidence includes a written observation by an outreach worker of the conditions where the individual or family was living, a written referral by another housing or service provider, or a certification by the individual or head of household seeking assistance.

(2) If the individual qualifies as homeless under paragraph (1)(iii) of the homeless definition in §576.2, because he or she resided in an emergency shelter or place not meant for human habitation and is exiting an institution where he or she resided for 90 days or less, acceptable evidence includes the evidence described in paragraph (b)(1) of this section and one of the following:

(i) Discharge paperwork or a written or oral referral from a social worker, case manager, or other appropriate official of the institution, stating the beginning and end dates of the time residing in the institution. All oral statements must be recorded by the intake worker; or

(ii) Where the evidence in paragraph (b)(2)(i) of this section is not obtainable, a written record of the intake worker's due diligence in attempting to obtain the evidence described in paragraph (b)(2)(i) and a certification by the individual seeking assistance that states he or she is exiting or has just exited an institution where he or she resided for 90 days or less.

(3) If the individual or family qualifies as homeless under paragraph (2) of the homeless definition in §576.2, because the individual or family will imminently lose their housing, the evidence must include:

(i)

(A) A court order resulting from an eviction action that requires the individual or family to leave their residence within 14 days after the date of their application for homeless assistance; or the equivalent notice under applicable state law, a Notice to Quit, or a Notice to Terminate issued under state law;

(B) For individuals and families whose primary nighttime residence is a hotel or motel room not paid for by charitable organizations or federal, state, or local government programs for low-income individuals, evidence that the individual or family lacks the resources necessary to reside there for more than 14 days after the date of application for homeless assistance; or

(C) An oral statement by the individual or head of household that the owner or renter of the housing in which they currently reside will not allow them to stay for more than 14 days after the date of application for homeless assistance. The intake worker must record the statement and certify that it was found credible. To be found credible, the oral statement must either: (I) be verified by the owner or renter of the housing in which the individual or family resides at the time of application for homeless assistance and documented by a written certification by the owner or renter or by the intake worker's recording of the owner or renter's oral statement; or (II) if the intake worker is unable to contact the owner or renter, be documented by a written certification by the intake worker of his or her due diligence in attempting to obtain the owner or renter's verification and the written certification by the individual or head of household seeking assistance that his or her statement was true and complete;

(ii) Certification by the individual or head of household that no subsequent residence has been identified; and

(iii) Certification or other written documentation that the individual or family lacks the resources and support networks needed to obtain other permanent housing.

(4) If the individual or family qualifies as homeless under paragraph (3) of the homeless definition in §576.2, because the individual or family does not otherwise qualify as homeless under the homeless definition but is an unaccompanied youth under 25 years of age, or homeless family with one or more children or youth, and is defined as homeless under another Federal statute or section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), the evidence must include:

- (i) For paragraph (3)(i) of the homeless definition in §576.2, certification of homeless status by the local private nonprofit organization or state or local governmental entity responsible for administering assistance under the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*), the Head Start Act (42 U.S.C. 9831 *et seq.*), subtitle N of the Violence Against Women Act of 1994 (42 U.S.C. 14043e *et seq.*), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*), section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*), as applicable;
- (ii) For paragraph (3)(ii) of the homeless definition in §576.2, referral by a housing or service provider, written observation by an outreach worker, or certification by the homeless individual or head of household seeking assistance;
- (iii) For paragraph (3)(iii) of the homeless definition in §576.2, certification by the individual or head of household and any available supporting documentation that the individual or family moved two or more times during the 60-day period immediately preceding the date of application for homeless assistance, including: recorded statements or records obtained from each owner or renter of housing, provider of shelter or housing, or social worker, case worker, or other appropriate official of a hospital or institution in which the individual or family resided; or, where these statements or records are unobtainable, a written record of the intake worker's due diligence in attempting to obtain these statements or records. Where a move was due to the individual or family fleeing domestic violence, dating violence, sexual assault, or stalking, then the intake worker may alternatively obtain a written certification from the individual or head of household seeking assistance that they were fleeing that situation and that they resided at that address; and
- (iv) For paragraph (3)(iv) of the homeless definition in §576.2, written diagnosis from a professional who is licensed by the state to diagnose and treat that condition (or intake staff-recorded observation of disability that within 45 days of date of the application for assistance is confirmed by a professional who is licensed by the state to diagnose and treat that condition); employment records; department of corrections records; literacy, English proficiency tests; or other reasonable documentation of the conditions required under paragraph (3)(iv) of the homeless definition.

(5) If the individual or family qualifies under paragraph (4) of the homeless definition in §576.2, because the individual or family is fleeing domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions related to violence, then acceptable evidence includes an oral statement by the individual or head of household seeking assistance that they are fleeing that situation, that no subsequent residence has been identified and that they lack the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other housing. If the individual or family is receiving shelter or services provided by a victim service provider, the oral statement must be documented by either a certification by the individual or head of household; or a certification by the intake worker. Otherwise, the oral statement that the individual or head of household seeking assistance has not identified a subsequent residence and lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain housing must be documented by a certification by the individual or head of household that the oral statement is true and complete, and, where the safety of the individual or family would not be jeopardized, the domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening condition must be verified by a written observation by the intake worker or a written referral by a housing or service provider, social worker, legal assistance provider, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or any other organization from whom the individual or head of household has sought assistance for domestic violence, dating violence, sexual assault, or stalking. The written referral or observation need only include the minimum amount of information necessary to document that the individual or family is fleeing, or attempting to flee domestic violence, dating violence, sexual assault, and stalking.

(c) *At risk of homelessness status.* For each individual or family who receives Emergency Solutions Grant (ESG) homelessness prevention assistance, the records must include the evidence relied upon to establish and verify the individual or family's "at risk of homelessness" status. This evidence must include an intake and certification form that meets HUD specifications and is completed by the recipient or subrecipient. The evidence must also include:

(1) If the program participant meets the criteria under paragraph (1) of the "at risk of homelessness" definition in §576.2:

- (i) The documentation specified under this section for determining annual income;
- (ii) The program participant's certification on a form specified by HUD that the program participant has insufficient financial resources and support networks; e.g., family, friends, faith-based or other social networks, immediately available to attain housing stability and meets one or more of the conditions under paragraph (1)(iii) of the definition of "at risk of homelessness" in §576.2;
- (iii) The most reliable evidence available to show that the program participant does not have sufficient resources or support networks; e.g., family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the "homeless" definition. Acceptable evidence includes:

- (A) Source documents (e.g., notice of termination from employment, unemployment compensation statement, bank statement, health-care bill showing arrears, utility bill showing arrears);
- (B) To the extent that source documents are unobtainable, a written statement by the relevant third party (e.g., former employer, public administrator, relative) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party that the applicant meets one or both of the criteria under paragraph (1)(ii) of the definition of "at risk of homelessness" in §576.2; or
- (C) To the extent that source documents and third-party verification are unobtainable, a written statement by the recipient's or subrecipient's intake staff describing the efforts taken to obtain the required evidence; and

(iv) The most reliable evidence available to show that the program participant meets one or more of the conditions under paragraph (1)(iii) of the definition of "at risk of homelessness" in §576.2. Acceptable evidence includes:

- (A) Source documents that evidence one or more of the conditions under paragraph (1)(iii) of the definition (e.g., eviction notice, notice of termination from employment, bank statement);
- (B) To the extent that source documents are unobtainable, a written statement by the relevant third party (e.g., former employer, owner, primary leaseholder, public administrator, hotel or motel manager) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party that the applicant meets one or more of the criteria under paragraph (1)(iii) of the definition of "at risk of homelessness"; or
- (C) To the extent that source documents and third-party verification are unobtainable, a written statement by the recipient's or subrecipient's intake staff that the staff person has visited the applicant's residence and determined that the applicant meets one or more of the criteria under paragraph (1)(iii) of the definition or, if a visit is not practicable or relevant to the determination, a written statement by the recipient's or subrecipient's intake staff describing the efforts taken to obtain the required evidence; or

(2) If the program participant meets the criteria under paragraph (2) or (3) of the "at risk of homelessness" definition in §576.2, certification of the child or youth's homeless status by the agency or organization responsible for administering assistance under the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*), the Head Start Act (42 U.S.C. 9831 *et seq.*), subtitle N of the Violence Against Women Act of 1994 (42 U.S.C. 14043e *et seq.*), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*), section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*), as applicable.

(d) *Determinations of ineligibility.* For each individual and family determined ineligible to receive Emergency Solutions Grant (ESG) assistance, the record must include documentation of the reason for that determination.

(e) *Annual income.* For each program participant who receives homelessness prevention assistance, or who receives rapid re-housing assistance longer than one year, the following documentation of annual income must be maintained:

- (1) Income evaluation form containing the minimum requirements specified by HUD and completed by the recipient or subrecipient; and
- (2) Source documents for the assets held by the program participant and income received over the most recent period for which representative data is available before the date of the evaluation (e.g., wage statement, unemployment compensation statement, public benefits statement, bank statement);
- (3) To the extent that source documents are unobtainable, a written statement by the relevant third party (e.g., employer, government benefits administrator) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party of the income the program participant received over the most recent period for which representative data is available; or
- (4) To the extent that source documents and third party verification are unobtainable, the written certification by the program participant of the amount of income the program participant received for the most recent period representative of the income that the program participant is reasonably expected to receive over the 3-month period following the evaluation.

(f) *Program participant records.* In addition to evidence of homeless status or "at risk of homelessness" status, as applicable, records must be kept for each program participant that document:

- (1) The services and assistance provided to that program participant, including, as applicable, the security deposit, rental assistance, and utility payments made on behalf of the program participant;
- (2) Compliance with the applicable requirements for providing services and assistance to that program participant under the program components and eligible activities provisions at §576.101 through §576.106, the provision on determining eligibility and amount and type of assistance at §576.401(a) and (b), and the provision on using appropriate assistance and services at §576.401(d) and (e); and
- (3) Where applicable, compliance with the termination of assistance requirement in §576.402.

(g) *Centralized or coordinated assessment systems and procedures.* The recipient and its subrecipients must keep documentation evidencing the use of, and written intake procedures for, the centralized or coordinated assessment system(s) developed by the Continuum of Care(s) in accordance with the requirements established by HUD.

(h) *Rental assistance agreements and payments.* The records must include copies of all leases and rental assistance agreements for the provision of rental assistance, documentation of payments made to owners for the provision of rental assistance, and supporting documentation for these payments, including dates of occupancy by program participants.

(i) *Utility allowance.* The records must document the monthly allowance for utilities (excluding telephone) used to determine compliance with the rent restriction.

(j) *Shelter and housing standards.* The records must include documentation of compliance with the shelter and housing standards in §576.403, including inspection reports.

(k) *Emergency shelter facilities.* The recipient must keep records of the emergency shelters assisted under the ESG program, including the amount and type of assistance provided to each emergency shelter. As applicable, the recipient's records must also include documentation of the value of the building before the rehabilitation of an existing emergency shelter or after the conversion of a building into an emergency shelter and copies of the recorded deed or use restrictions.

(l) *Services and assistance provided.* The recipient must keep records of the types of essential services, rental assistance, and housing stabilization and relocation services provided under the recipient's program and the amounts spent on these services and assistance. The recipient and its subrecipients that are units of general purpose local government must keep records to demonstrate compliance with the maintenance of effort

requirement, including records of the unit of the general purpose local government's annual budgets and sources of funding for street outreach and emergency shelter services.

(m) *Coordination with Continuum(s) of Care and other programs.* The recipient and its subrecipients must document their compliance with the requirements of §576.400 for consulting with the Continuum(s) of Care and coordinating and integrating ESG assistance with programs targeted toward homeless people and mainstream service and assistance programs.

(n) *HMIS.* The recipient must keep records of the participation in HMIS or a comparable database by all projects of the recipient and its subrecipients.

(o) *Matching.* The recipient must keep records of the source and use of contributions made to satisfy the matching requirement in §576.201. The records must indicate the particular fiscal year grant for which each matching contribution is counted. The records must show how the value placed on third-party, noncash contributions was derived. To the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocation of regular personnel costs.

(p) *Conflicts of interest.* The recipient and its subrecipients must keep records to show compliance with the organizational conflicts-of-interest requirements in §576.404(a), a copy of the personal conflicts of interest policy or codes of conduct developed and implemented to comply with the requirements in §576.404(b), and records supporting exceptions to the personal conflicts of interest prohibitions.

(q) *Homeless participation.* The recipient must document its compliance with the homeless participation requirements under §576.405.

(r) *Faith-based activities.* The recipient and its subrecipients must document their compliance with the faith-based activities requirements under §576.406.

(s) *Other Federal requirements.* The recipient and its subrecipients must document their compliance with the Federal requirements in §576.407, as applicable, including:

- (1) Records demonstrating compliance with the nondiscrimination and equal opportunity requirements under §576.407(a), including data concerning race, ethnicity, disability status, sex, and family characteristics of persons and households who are applicants for, or program participants in, any program or activity funded in whole or in part with ESG funds and the affirmative outreach requirements in §576.407(b).
- (2) Records demonstrating compliance with the uniform administrative requirements in 24 CFR part 85 (for governments) and 24 CFR part 84 (for nonprofit organizations).
- (3) Records demonstrating compliance with the environmental review requirements, including flood insurance requirements.
- (4) Certifications and disclosure forms required under the lobbying and disclosure requirements in 24 CFR part 87.

(t) *Relocation.* The records must include documentation of compliance with the displacement, relocation, and acquisition requirements in §576.408.

(u) *Financial records.*

- (1) The recipient must retain supporting documentation for all costs charged to the ESG grant.
- (2) The recipient and its subrecipients must keep documentation showing that ESG grant funds were spent on allowable costs in accordance with the requirements for eligible activities under §576.101-§576.109 and the cost principles in OMB Circulars A-87 (2 CFR part 225) and A-122 (2 CFR part 230).
- (3) The recipient and its subrecipients must retain records of the receipt and use of program income.
- (4) The recipient must keep documentation of compliance with the expenditure limits in §576.100 and the expenditure deadline in §576.203.

(v) *Subrecipients and contractors.*

- (1) The recipient must retain copies of all solicitations of and agreements with subrecipients, records of all payment requests by and dates of payments made to subrecipients, and documentation of all monitoring and sanctions of subrecipients, as applicable. If the recipient is a State, the recipient must keep records of each recapture and distribution of recaptured funds under §576.501.
- (2) The recipient and its subrecipients must retain copies of all procurement contracts and documentation of compliance with the procurement requirements in 24 CFR 85.36 and 24 CFR 84.40–84.48.
- (3) The recipient must ensure that its subrecipients comply with the recordkeeping requirements specified by the recipient and HUD notice or regulations.

(w) *Other records specified by HUD.* The recipient must keep other records specified by HUD.

(x) *Confidentiality.*

(1) The recipient and its subrecipients must develop and implement written procedures to ensure:

- (i) All records containing personally identifying information (as defined in HUD's standards for participation, data collection, and reporting in a local HMIS) of any individual or family who applies for and/or receives ESG assistance will be kept secure and confidential;
- (ii) The address or location of any domestic violence, dating violence, sexual assault, or stalking shelter project assisted under the ESG will not be made public, except with written authorization of the person responsible for the operation of the shelter; and
- (iii) The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of the recipient or subrecipient and consistent with state and local laws regarding privacy and obligations of confidentiality.

(2) The confidentiality procedures of the recipient and its subrecipients must be in writing and must be maintained in accordance with this section.

(y) *Period of record retention.* All records pertaining to each fiscal year of ESG funds must be retained for the greater of 5 years or the period specified below. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

- (1) Documentation of each program participant's qualification as a family or individual at risk of homelessness or as a homeless family or individual and other program participant records must be retained for 5 years after the expenditure of all funds from the grant under which the program participant was served;
- (2) Where ESG funds are used for the renovation of an emergency shelter involves costs charged to the ESG grant that exceed 75 percent of the value of the building before renovation, records must be retained until 10 years after the date that ESG funds are first obligated for the renovation; and
- (3) Where ESG funds are used to convert a building into an emergency shelter and the costs charged to the ESG grant for the conversion exceed 75 percent of the value of the building after conversion, records must be retained until 10 years after the date that ESG funds are first obligated for the conversion.

(z) *Access to records.*

- (1) *Federal government rights.* Notwithstanding the confidentiality procedures established under paragraph (w) of this section, HUD, the HUD Office of the Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, must have the right of access to all books, documents, papers, or other records of the recipient and its subrecipients that are pertinent to the ESG grant, in order to make audits, examinations, excerpts, and transcripts. These rights of access are not limited to the required retention period but last as long as the records are retained.
- (2) *Public rights.* The recipient must provide citizens, public agencies, and other interested parties with reasonable access (consistent with state and local laws regarding privacy and obligations of confidentiality and the confidentiality requirements in this part) to records regarding any uses of ESG funds the recipient received during the preceding 5 years.

(aa) *Reports.* The recipient must collect and report data on its use of ESG funds in the Integrated Disbursement and Information System (IDIS) and other reporting systems, as specified by HUD. The recipient must also

comply with the reporting requirements in 24 CFR parts 85 and 91 and the reporting requirements under the Federal Funding Accountability and Transparency Act of 2006, (31 U.S.C. 6101 note), which are set forth in appendix A to 2 CFR part 170.

§ 576.501 Enforcement.

(a) Performance reviews.

(1) HUD will review the performance of each recipient in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from the recipient and, when appropriate, its subrecipients, as well as information from onsite monitoring, audit reports, and information from IDIS and HMIS. Where applicable, HUD may also consider relevant information pertaining to the recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the recipient.

(2) If HUD determines preliminarily that the recipient or one of its subrecipients has not complied with an ESG program requirement, HUD will give the recipient notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD and on the basis of substantial facts and data, that the recipient has complied with Emergency Solutions Grant (ESG) requirements. HUD may change the method of payment to require the recipient to obtain HUD's prior approval each time the recipient draws down Emergency Solutions Grant (ESG) funds. To obtain prior approval, the recipient may be required to manually submit its payment requests and supporting documentation to HUD in order to show that the funds to be drawn down will be expended on eligible activities in accordance with all ESG program requirements.

(3) If the recipient fails to demonstrate to HUD's satisfaction that the activities were carried out in compliance with ESG program requirements, HUD will take one or more of the remedial actions or sanctions specified in paragraph (b) of this section.

(b) Remedial actions and sanctions. Remedial actions and sanctions for a failure to meet an ESG program requirement will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

(1) HUD may instruct the recipient to submit and comply with proposals for action to correct, mitigate, and prevent noncompliance with ESG requirements, including:

- (i) Preparing and following a schedule of actions for carrying out activities affected by the noncompliance, including schedules, timetables, and milestones necessary to implement the affected activities;
- (ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;
- (iii) Canceling or revising activities likely to be affected by the noncompliance, before expending ESG funds for the activities;
- (iv) Reprogramming ESG funds that have not yet been expended from affected activities to other eligible activities;
- (v) Suspending disbursement of ESG funds for some or all activities;
- (vi) Reducing or terminating the remaining grant of a subrecipient and reallocating those funds to other subrecipients; and
- (vii) Making matching contributions before or as draws are made from the recipient's ESG grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD deems it necessary to preclude the further expenditure of funds for affected activities.

(4) HUD may remove the recipient from participation in reallocations of funds under subpart D of this part.

(5) HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.

(6) HUD may require the recipient to reimburse its line of credit in an amount equal to the funds used for the affected activities.

- (7) HUD may reduce or terminate the remaining grant of a recipient and reallocate those funds to other recipients in accordance with subpart D of this part.
- (8) HUD may condition a future grant.
- (9) HUD may take other remedies that are legally available.

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with an ESG program requirement or its subgrant agreement, the recipient must take appropriate actions, as prescribed for HUD in paragraphs (a) and (b) of this section. If the recipient is a State and funds become available as a result of an action under this section, the recipient must reallocate those funds to other subrecipients as soon as practicable. If the recipient is a unit of general purpose local government of territory, it must either reallocate those funds to other subrecipients or reprogram the funds for other activities to be carried out by the recipient as soon as practicable. The recipient must amend its Consolidated Plan in accordance with its citizenship participation plan if funds become available and are reallocated or reprogrammed under this section. The reallocated or reprogrammed funds must be used by the expenditure deadline in §576.203.



CITY OF AUSTIN
EMERGENCY SOLUTIONS GRANT (ESG)
HOMELESS ELIGIBILITY FORM

ESG ELIGIBILITY CATEGORY: (check only one)

NOTE: Form is not complete unless the client and staff have signed the second side of document.

☐

Category 1- Literally Homeless

- (1) Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
- Has a primary nighttime residence that is a public or private place not meant for human habitation;
 - Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, and local government programs; or
 - Is exiting an institution where (s)he has resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.

DOCUMENTATION REQUIRED IN HUD'S PREFERRED ORDER:

- Third Party/Written:
If unsheltered: Written referral by of street outreach, law enforcement, EMS, or other shelter record, or homeless certification; or
If sheltered/exiting an institution: HMIS shelter stay record, or homeless certification, or referral from shelter services or other housing provider; or
- Written observation by the intake staff worker; or
- Self-Certification by the individual or head of household seeking assistance stating that s(he) was living on the streets or in shelter;
- For individuals exiting an institution- one of the forms of evidence above and:
 - Discharge paperwork or written/oral referral, or
 - Written record of intake worker's due diligence to obtain evidence and certification by individual that they exited institution.

☐

Category 2- Imminently Losing Primary Nighttime Residence- Ineligible Category for Rapid Rehousing

- (2) Individual or family who will imminently lose their primary nighttime residence within 14 days, provided that:
- No subsequent residence has been identified; and
 - The household lacks the resources or support networks needed to obtain other permanent housing.

DOCUMENTATION REQUIRED – at least one of the following must state the household must leave within 14 days:

- A court order resulting from an eviction notice or equivalent notice, or a formal eviction notice; or
- For individuals in hotels or motels that they are paying for, evidence that the individual or family lacks the necessary financial resources to stay for more than 14 days; or
- An oral statement by the individual or head of household stating that the owner or renter of the residence will not allow them to stay for more than 14 days. The intake worker must verify the statement either through contact with the owner or renter, or documentation of due diligence in attempting to obtain such a statement.
- Certification that no subsequent residence has been identified; and
- Self-certification or other written documentation that the individual lacks the financial resources and support necessary to obtain permanent housing.

☐

Category 3- Persistent Housing Instability- Ineligible Category
People with ALL of these characteristics:

- Unaccompanied youth (less than 25 years of age) or family with children and youth;
- Defined as homeless under other federal statutes (for example the definition used by the Department of Education) who do not otherwise qualify as homeless under HUD's definition;
- Has not had a lease, ownership interest, or occupancy agreement in permanent housing in the 60 days prior to applying for assistance;
- Has moved two or more times in the 60 days immediately prior to applying for assistance;
- Has one or more of the following: chronic disabilities, chronic physical or mental health conditions substance addiction histories of domestic violence or childhood abuse child with a disability two or more barriers to employment, which include
 - lack of a high school degree or GED - illiteracy - low English proficiency - history of incarceration or detention for criminal activity - history of unstable employment

DOCUMENTATION REQUIRED:

- A nonprofit, state, or local government entity that administers the other federal statute must certify that household qualifies as homeless under that statute's definition.
- To document that the individual has not had a lease, occupancy agreement, or ownership interest in housing in the last 60 days, certification by the individual or head of household, written observation by an outreach worker, or referral by a provider.

- To document that the individual or family has moved two times in the past 60 days, a certification from the individual and supporting documentation, including records or statements from each owner or renter of housing, shelter or housing provider, or social worker, case worker, or appropriate official of an institution where the individual or family resided. Where these statements are unobtainable, the intake worker should include a written record of his or her due diligence in attempting to obtain them.
- Evidence of barriers includes: Written diagnosis from a licensed professional, employment records, department of corrections records, literacy, and English proficiency tests. For disability, any of the above, written verification from the Social Security Administration (or a disability check receipt), or observation of the intake worker of disability, which must be confirmed within 45 days by an appropriate professional.

☐

Category 4- Fleeing/Attempting to Flee Domestic Violence

- (4) Any individual or family who:
- Is fleeing, or is attempting to flee domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence;
 - Has no other residence; and
 - Lacks the resources or support networks to obtain other permanent housing.

DOCUMENTATION REQUIRED:

- *For victim service providers:*
 - An oral statement by the individual or head of household seeking assistance which states: they are fleeing they have no subsequent residence; and they lack resources. Statement must be documented by a self-certification or a certification by the intake worker.
- *For non-victim service providers:*
 - Oral statement by the individual or head of household seeking assistance that they are fleeing. This statement is documented by a self-certification or by the caseworker. Where the safety of the individual or family is not jeopardized, the oral statement must be verified; and
 - Certification by the individual or head of household that no subsequent residence has been identified; and
 - Self-certification or other written documentation that the individual lacks the financial resources and support necessary to obtain permanent housing.

DOES THIS CLIENT ALSO MEET THE FOLLOWING DEFINITION OF A CHRONICALLY HOMELESS PERSON?

Chronically homeless means:

- (1) A "homeless individual with a disability," as defined in section 401(9) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(9)), who: (i) Lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and (ii) Has been homeless and living as described in paragraph (1)(i) of this definition continuously for at least 12 months or on at least 4 separate occasions in the last 3 years, as long as the combined occasions equal at least 12 months and each break in homelessness separating the occasions included at least 7 consecutive nights of not living as described in paragraph (1)(i). Stays in institutional care facilities for fewer than 90 days will not constitute as a break in homelessness, but rather such stays are included in the 12-month total, as long as the individual was living or residing in a place not meant for human habitation, a safe haven, or an emergency shelter immediately before entering the institutional care facility;
- (2) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or
- (3) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) or (2) of this definition, including a family whose composition has fluctuated while the head of household has been homeless. (Updated 12-4-15)

☐ **YES**

☐ **NO**

☐ **DON'T KNOW**

If **YES**, then provide the client information requested below:

HOUSING HISTORY FOR CHRONICALLY HOMELESS PERSONS

MOST RECENT YEAR

Month/Year	Description of Homelessness

SECOND YEAR

Month/Year	Description of Homelessness

THIRD YEAR

Month/Year	Description of Homelessness

The above statement of my homeless status is true and complete.

CLIENT NAME (Printed)

CLIENT SIGNATURE

DATE

FOR INTAKE STAFF ONLY:

Verification Methods: Describe methods to obtain third party documentation (shelter records; outreach programs; medical services; law enforcement; etc.). Describe the outcome of the efforts to obtain documents.

The above statements regarding this client's ESG homeless eligibility is true and complete to the best of my knowledge. I have attempted to obtain third party documentation to the best of my ability.

INTAKE STAFF SIGNATURE

DATE



U.S. Dept. of Housing and Urban Development (HUD)
Habitability Standards (including lead-based paint)

Instructions: Place a check mark in the correct column to indicate whether the property is approved or deficient with respect to each standard. The property must meet ALL standards in order to be approved. A copy of this checklist should be placed in the client file.

STANDARD (24 CFR part 576.403c)	Approved	Deficient
1. Structure and Materials: The structure is structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.		
2. Space and Security: Each resident is provided adequate space and security for themselves and their belongings. Each resident is provided an acceptable place to sleep.		
3. Interior Air Quality: Each room or space has a natural or mechanical means of ventilation. The interior air is free of pollutants at a level that might threaten or harm the health of residents.		
4. Water supply: The water supply is free from contaminants.		
5. Sanitary Facilities: Residents have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and disposal of human waste.		
6. Thermal Environment: The housing has any necessary heating/cooling facilities in proper operating condition.		
7. Illumination and Electricity: The structure has adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There are sufficient electrical sources to permit the safe use of electrical appliances in the structure.		
8. Food preparation: All food preparation areas contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.		
9. Sanitary Condition: The housing is maintained in sanitary condition.		
10. Fire Safety: a. There is a second means of exiting the building in the event of a fire or other emergency. b. The unit includes at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors are located, to the extent practicable, in a hallway adjacent to a bedroom. c. If the unit is occupied by hearing-impaired persons, smoke detectors have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.		



U.S. Dept. of Housing and Urban Development (HUD)
Habitability Standards (including lead-based paint)

d. The public areas are equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, day care centers, hallways, stairways, and other common areas.		
11. Meets additional recipients/sub recipient standards (if any):		
12. Lead-based paint. If the structure was built prior to 1978, and a child under the age of six or a pregnant woman will reside on the property, and the property has defective paint surface inside or outside the structure, the property cannot be approved until the defective surface is appropriately treated. Defective paint surface means: applicable surface in which paint is cracking, scaling, chipping, peeling or loose. a. Building built/rehabbed before 1978? ____ yes or ____ no b. Children under 6 present? ____ yes ____ no c. Pregnant woman present? ____ yes ____ no		

I certify that I have evaluated the property located at the address below to the best of my ability and find the following:

The property meets ALL of the above standards: ____ yes ____ no

Therefore, I make the following determination:

The property is approved: ____ yes ____ no

Comments: _____

Client information:

Print Name _____

Unit Street Address _____ Apt. # _____

City: _____ State: _____ Zip Code: _____

Evaluator Information:

Print name: _____

Signature: _____

Date of Review: _____

FEDERAL AWARD IDENTIFICATION

1. Subrecipient Name: Front Steps, Inc.
2. Subrecipient's DUNS Number: 071056936
3. Federal Award Identification Number: E-20-MC-48-0500
4. Federal Award Date (date the Federal Award is signed by Federal awarding agency official): 9/21/2020
5. Subaward Period of Performance Start and End Date:
Start Date 10/1/2020
End Date 9/30/2021
6. Amount of Federal Funds Obligated to (or Contracted for) by this action by the pass-through entity to the Subrecipient: \$313,922
7. Total Amount of Federal Funds Obligated (or Contracted for) to the Subrecipient by the pass-through entity, including the current obligation: \$941,766
8. Total Amount of Federal Award awarded to the pass-through entity: \$682,911
9. Federal Award Project Description (please provide a brief, but concise, description of the purpose and intended outcomes of the subaward):
Funds will be used to operate the ARCH homeless shelter, and provide a safe and clean facility that provides a respite from the elements, functioning as a place for clients to meet several of their basic needs, and serving as an entry portal to a variety of programs and services dedicated to assisting and empowering clients to achieve self-sufficiency.
10. Name of Federal Awarding Agency, Pass Through Entity, and contact information for Awarding Official:
Federal Awarding Agency: U.S. Dept. of Housing and Urban Development
Pass Through Entity: Austin Public Health, City of Austin
Awarding Official Contact Information: Rosie Trulove, NHCD Department Director
(512) 974-3064, rosie.trulove@austintexas.gov
11. CFDA Number and Name: Emergency Solutions Grant CFDA #14.31
12. Is award for Research & Development? No
13. Indirect Cost Rate for the Federal Award: Not Applicable



**AGREEMENT BETWEEN
THE CITY OF AUSTIN
AND
FRONT STEPS, INC.
FOR
SOCIAL SERVICES**

*Emergency Solutions Grant- ARCH Shelter Operations
CFDA # 14.231*

AGREEMENT NO. 4700 NG190000012

AGREEMENT AMOUNT: \$313,922

This Agreement is made by and between the City of Austin (the City) acting by and through its Austin Public Health department (APH), a home-rule municipality incorporated by the State of Texas, and Front Steps, Inc. (Grantee), a Texas non-profit corporation, having offices at 500 E. 7th Street, Austin, Texas 78701.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 Engagement of the Grantee. Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Grantee is engaged to provide the services set forth in the attached Agreement Exhibits.

1.2 Responsibilities of the Grantee. The Grantee shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Agreement Exhibits. The Grantee shall assure that all Agreement provisions are met by any Subgrantee performing services for the Grantee.

1.3 Responsibilities of the City. The City's Agreement Manager will be responsible for exercising general oversight of the Grantee's activities in completing the Program Work Statement. Specifically, the Agreement Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Agreement, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Grantee, and shall approve all requests for payment, as appropriate. The City's Agreement Manager shall give the Grantee timely feedback on the acceptability of progress and task reports. The Agreement Manager's oversight of the Grantee's activities shall be for the City's benefit and shall not imply or create any partnership or joint venture as between the City and the Grantee.

1.4 Designation of Key Personnel. The City's Agreement Manager for this Agreement, to the extent stated in the preceding Section 1.3, shall be responsible for oversight and monitoring of Grantee's performance under this Agreement as needed to represent the City's interest in the Grantee's performance.

1.4.1 The City's Agreement Manager or designee:

- may meet with Grantee to discuss any operational issues or the status of the services or work to be performed; and
- shall promptly review all written reports submitted by Grantee, determine whether the reports comply with the terms of this Agreement, and give Grantee timely feedback on the adequacy of progress and task reports or necessary additional information.

1.4.2 Grantee's Agreement Manager or designee, shall represent the Grantee with regard to performance of this Agreement and shall be the designated point of contact for the City's Agreement Manager.

1.4.3 If either party replaces its Agreement Manager, that party shall promptly send written notice of the change to the other party. The notice shall identify a qualified and competent replacement and provide contact information.

SECTION 2. TERM

2.1 **Term of Agreement.** The Agreement shall be in effect for a term of 12 months beginning October 1, 2018 through September 30, 2019, and may be extended thereafter for up to 4 additional 12-month periods, subject to the approval of the Grantee and the City Purchasing Officer or their designee.

2.1.1 Upon expiration of the initial term or period of extension, the Grantee agrees to hold over under the terms and conditions of this Agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed upon in writing).

SECTION 3. PROGRAM WORK STATEMENT

3.1 **Grantee's Obligations.** The Grantee shall fully and timely provide all services described in the attached Agreement Exhibits in strict accordance with the terms, covenants, and conditions of the Agreement and all applicable federal, state, and local laws, rules, and regulations.

SECTION 4. COMPENSATION AND REPORTING

4.1 **Agreement Amount.** The Grantee acknowledges and agrees that, notwithstanding any other provision of this Agreement, the maximum amount payable by the City under this Agreement for the initial 12 month term shall not exceed the amount approved by City Council, which is **\$313,922 (Three Hundred Thirteen Thousand Nine Hundred Twenty Two dollars)**, and \$313,922 (*Three Hundred Thirteen Thousand Nine Hundred Twenty Two dollars*) per 12 month extension option, for a total Agreement amount of \$1,569,610. Continuation of the Agreement beyond the initial 12 months is specifically contingent upon the availability and allocation of funding, and authorization by City Council.

4.1.1 The Grantee shall expend City funds according to the approved budget categories described in Exhibit B.1, Program Budget and Narrative.

4.1.1.1 **Budget Revision:** The Grantee may make transfers between or among the approved budget categories with the City Agreement Manager's prior approval, provided that:

- i. The cumulative amount of the transfers between direct budget categories (Personnel, Operating Expenses, Direct Assistance and/or Equipment/Capital Outlay) is not more than 10% of the program period total –or– \$50,000, whichever is less;
- ii. the transfers will not increase or decrease the total monetary obligation of the City under this Agreement; and
- iii. the transfers will not change the nature, performance level, or scope of the program funded under this Agreement.

4.1.1.2 Transfers between or among the approved budget categories in excess of 10% or more than \$50,000 will require the City Agreement Manager's approval, and must meet all of the conditions outlined in Section 4.1.1.1 (ii) and (iii) above.

- i. The Grantee must submit a Budget Revision Form to the City prior to the submission of the Grantee's first monthly billing to the City following the transfer.

4.1.2 Payment to the Grantee shall be made in the following increments:

4.1.2.1 For the Program Period of 10/1/2018 through 9/30/2019, the payment from the City to the Grantee shall not exceed \$313,922 (*Three Hundred Thirteen Thousand Nine Hundred Twenty Two dollars*).

4.2 Requests for Payment. Payment to the Grantee shall be due 30 calendar days following receipt by the City of Grantee's fully and accurately completed "Payment Request" and "Monthly Expenditure Report", using forms at <http://www.ckodm.com/austin/>. The payment request and expenditure report must be submitted to the City no later than 5:00 p.m. Central Standard Time 15 calendar days following the end of the month covered by the request and expenditure report. If the 15th calendar day falls on a weekend or holiday, as outlined in Section 8.24, the deadline to submit the payment request and expenditure report is extended to no later than 5:00 p.m. Central Standard Time of the 1st weekday immediately following the weekend or holiday. Grantee must provide the City with supporting documentation for each monthly Payment Request which includes, but not limited to, a report of City Agreement expenditures generated from the Grantee's financial management system. Examples of appropriate supporting documentation MAY include, but are not limited to:

- General Ledger Detail report from the Grantee's financial management system
- Profit & Loss Detail report from the Grantee's financial management system
- Check ledger from the Grantee's financial management system
- Payroll reports and summaries, including salary allocation reports and signed timesheets
- Receipts and invoices
- Copies of checks and bank statements showing transactions as cleared

The City retains right of final approval of any supporting documentation submitted before a Payment Request is approved for processing. Failure to provide supporting documentation acceptable to the City may result in delay or rejection of the Payment Request. The City reserves the right to modify the required supporting documentation, as needed.

4.2.1 Unless otherwise expressly authorized in the Agreement, the Grantee shall pass through all Subagreement and other authorized expenses at actual cost without markup.

4.2.2 Federal excise taxes, state taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

4.3 Payment.

4.3.1 All requests accepted and approved for payment by the City will be paid within 30 calendar days of the City's receipt of the deliverables or of the invoice, whichever is later. Requests for payment received without the information required in Section 4.2 cannot be processed, will be returned to the Grantee, and City will make no payment in connection with such request.

4.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until 10 calendar days after the grounds for withholding payment have been resolved.

4.3.3 The City may withhold or set off the entire payment or part of any payment otherwise due the Grantee to such extent as may be necessary on account of;

4.3.3.1 delivery of unsatisfactory services by the Grantee;

4.3.3.2 third party claims, which are not covered by the insurance which the Grantee is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

4.3.3.3 failure of the Grantee to pay Subgrantees, or for labor, materials or equipment,

4.3.3.4 damage to the property of the City or the City's agents, employees or Grantees, which is not covered by insurance required to be provided by the Grantee;

4.3.3.5 reasonable evidence that the Grantee's obligations will not be completed within the time specified in the Agreement, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

4.3.3.6 failure of the Grantee to submit proper payment requests and expenditure reports with all required attachments and supporting documentation;

4.3.3.7 failure of the Grantee to comply with any material provision of the Agreement; or

4.3.3.8 identification of previously reimbursed expenses determined to be unallowable after payment was made.

4.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City. Payment will be made by check unless the parties mutually agree to payment by electronic transfer of funds.

4.4 **Non-Appropriation.** The awarding or continuation of this Agreement is dependent upon the availability of funding and authorization by Council. The City's payment obligations are payable only and solely from funds appropriated and available for this Agreement. The absence of appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not appropriated or available and any deliverables delivered but unpaid shall be returned to the Grantee. The City shall provide the Grantee written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Agreement. In the event of non- or inadequate appropriation of funds, there will be no penalty or removal fees charged to the City.

4.5 **Travel Expenses.** All approved travel, lodging, and per diem expenses in connection with the Agreement for which reimbursement may be claimed by the Grantee under the terms of the Agreement will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (Rates) as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

4.6 **Final Payment and Close-Out.**

4.6.1 The making and acceptance of final payment will constitute:

4.6.1.1 a waiver of all claims by the City against the Grantee, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Grantee to comply with the Agreement or the terms of any warranty specified herein, regardless of when the cause for a claim is discovered (4) arising from the Grantee's continuing obligations under the Agreement, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

4.6.1.2 a waiver of all claims by the Grantee against the City other than those previously asserted in writing and not yet settled.

4.7 **Financial Terms.**

4.7.1 The City agrees to pay Grantee for services rendered under this Agreement and to reimburse Grantee for actual, eligible expenses incurred and paid in accordance with all terms and conditions of this Agreement. The City shall not be liable to Grantee for any costs incurred by Grantee which are not reimbursable as set forth in Section 4.8.

4.7.2 The City's obligation to pay is subject to the timely receipt of complete and accurate reports as set forth in Section 4.9 and any other deliverable required under this Agreement.

4.7.3 Payments to the Grantee will immediately be suspended upon the occasion of any late, incomplete, or inaccurate report, audit, or other required report or deliverable under this Agreement, and payments will not be resumed until the Grantee is in full compliance.

4.7.4 The City shall not be liable to Grantee for any costs which have been paid under other agreements or from other funds. In addition, the City shall not be liable for any costs incurred by Grantee which were: a) incurred prior to the effective date of this Agreement or outside the Agreement period as referenced in Sections 4.1.2 and 4.8.1., or b) not billed to the City within 5 business days before the due date for the Grantee's annual Contract Progress Report or Contract Closeout Summary Report, whichever is applicable.

4.7.5 Grantee agrees to refund to the City any funds paid under this Agreement which the City determines have resulted in overpayment to Grantee or which the City determines have not been spent by Grantee in accordance with the terms of this Agreement. Refunds shall be made by Grantee within 30 calendar days after a written refund request is submitted by the City. The City may, at its discretion, offset refunds due from any payment due Grantee, and the City may also deduct any loss, cost, or expense caused by Grantee from funds otherwise due.

4.7.6 Grantee shall deposit and maintain all funds received under this Agreement in either a separate numbered bank account or a general operating account, either of which shall be supported with the maintenance of a separate accounting with a specific chart which reflects specific revenues and expenditures for the monies received under this Agreement. The Grantee's accounting system must identify the specific expenditures, or portions of expenditures, against which funds under this Agreement are disbursed. Grantee must be able to produce an accounting system-generated report of exact expenses or portions of expenses charged to the City for any given time period.

4.7.7 Grantee is required to utilize an online Agreement management system for billing and reporting in accordance with the City's guidelines, policies, and procedures. Grantee is responsible for all data entered/edited under its unique username, as well as all required but omitted data.

4.7.8 Grantee shall expend the City budget in a reasonable manner in relation to Agreement time elapsed and/or Agreement program service delivery schedule. If cumulative expenditures are not within acceptable amounts, the City may require the Grantee to: 1) submit an expenditure plan, and/or 2) amend the Agreement budget amount to reflect projected expenditures, as determined by the City.

4.8 Allowable and Unallowable Costs.

The City shall make the final determination of whether a cost is allowable or unallowable under this Agreement.

4.8.1 Reimbursement Only. Expenses and/or expenditures shall be considered reimbursable only if incurred during the current Program Period identified in Section 4.1.2, directly and specifically in the performance of this Agreement, and in conformance with the Agreement Exhibits. Grantee agrees that, unless otherwise specifically provided for in this Agreement, payment by the City under the terms of this Agreement is made on a reimbursement basis only; Grantee must have incurred and paid costs prior to those costs being invoiced and considered allowable under this Agreement and subject to payment by the City. Expenses incurred during the Program Period may be paid up to 30 days after the end of the Program Period and included in the Final Payment Request for the Program Period, which shall be due no later than 5 p.m. CST 5 business days before the due date for the Grantee's annual Contract Progress Report or Contract Closeout Summary Report, whichever is applicable.

4.8.2 To be allowable under this Agreement, a cost must meet all of the following general criteria:

1. Be reasonable for the performance of the activity under the Agreement.
2. Conform to any limitations or exclusions set forth in this Agreement.
3. Be consistent with policies and procedures that apply uniformly to both government-financed and other activities of the organization.
4. Be determined and accounted in accordance with generally accepted accounting principles (GAAP).
5. Be adequately documented.

4.8.3 The City's prior written authorization is required in order for the following to be considered allowable costs. Inclusion in the budget within this Agreement constitutes "written authorization." The item shall be specifically identified in the budget. The City shall have the authority to make the final determination as to whether an expense is an allowable cost.

1. Alteration, construction, or relocation of facilities
2. Cash payments, including cash equivalent gift cards such as Visa, MasterCard and American Express

3. Equipment and other capital expenditures.
4. Interest, other than mortgage interest as part of a pre-approved budget under this Agreement
5. Organization costs (costs in connection with the establishment or reorganization of an organization)
6. Purchases of tangible, nonexpendable property, including fax machines, stereo systems, cameras, video recorder/players, microcomputers, software, printers, microscopes, oscilloscopes, centrifuges, balances and incubator, or any other item having a useful life of more than one year and an acquisition cost, including freight, of over \$5,000
7. Selling and marketing
8. Travel/training outside Travis County

4.8.4 The following types of expenses are specifically **not allowable** with City funds under this Agreement. The City shall have the authority to make the final determination as to whether an expense is an allowable cost.

1. Alcoholic beverages
2. Bad debts
3. Compensation of trustees, directors, officers, or advisory board members, other than those acting in an executive capacity
4. Contingency provisions (funds). (Self-insurance reserves and pension funds are allowable.)
5. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement
6. Deferred costs
7. Depreciation
8. Donations and contributions including donated goods or space
9. Entertainment costs, other than expenses related to client incentives
10. Fines and penalties (including late fees)
11. Fundraising and development costs
12. Goods or services for officers' or employees' personal use
13. Housing and personal living expenses for organization's officers or employees
14. Idle facilities and idle capacity
15. Litigation-related expenses (including personnel costs) in action(s) naming the City as a Defendant
16. Lobbying or other expenses related to political activity
17. Losses on other agreements or casualty losses
18. Public relations costs, except reasonable, pre-approved advertising costs related directly to services provided under this Agreement
19. Taxes, other than payroll and other personnel-related levies
20. Travel outside of the United States of America

4.9 **Reports.**

4.9.1 Grantee must submit a fully and accurately completed "Payment Request" and "Monthly Expenditure Report" to the City's Agreement Manager using the forms shown at <http://www.ckodm.com/austin/> by the deadline outlined in Section 4.2. Grantee must provide complete and accurate supporting documentation. Upon receipt and approval by the City of each complete and accurate Payment Request and Monthly Expenditure Report, the City shall process payment to the Grantee in an amount equal to the City's payment obligations, subject to deduction for any unallowable costs.

4.9.2 Grantee shall submit a quarterly performance report using the format and method specified by the City no later than 5:00 p.m. Central Time 15 calendar days following each calendar quarter. If the 15th calendar day falls on a weekend or holiday, as outlined in Section 8.24, the deadline to submit the quarterly performance report is extended to no later than 5:00 p.m. Central Standard Time of the 1st weekday immediately following the weekend or holiday. Grantee shall provide complete and accurate supporting documentation upon request by City. Payment Requests will not be approved if any accurate and complete performance report, including any required documentation, is past due.

Performance reports on a frequency other than quarterly may be required by the City based upon business needs.

4.9.3 An annual Contract Progress Report, using the forms shown at <http://www.ckodm.com/austin/>, shall be completed by the Grantee and submitted to the City within 60 calendar days following the end of each Program Period identified in Section 4.1.2.

4.9.4 A Contract Closeout Summary Report using the forms shown at <http://www.ckodm.com/austin/> shall be completed by the Grantee and submitted to the City within 60 calendar days following the expiration or termination of this Agreement. Any encumbrances of funds incurred prior to the date of termination of this Agreement shall be subject to verification by the City. Upon termination of this Agreement, any unused funds, unobligated funds, rebates, credits, or interest earned on funds received under this Agreement shall be returned to the City.

4.9.5 Grantee shall provide the City with a copy of the completed Administrative and Fiscal Review (AFR) using the forms shown at <http://www.ckodm.com/austin/>, and required AFR Attachments, including a copy of the Grantee's completed Internal Revenue Service Form 990 or 990EZ (Return of Organization Exempt from Income Tax) if applicable, for each calendar year to be due in conjunction with submission of the Grantee's annual financial audit report or financial review report as outlined in Section 4.12.4. If Grantee filed a Form 990 or Form 990EZ extension request, Grantee shall provide the City with a copy of that application of extension of time to file (IRS Form 2758) within 30 days of filing said form(s), and a copy of the final IRS Form 990 document(s) immediately upon completion.

4.9.6 Grantee shall provide other reports required by the City to document the effective and appropriate delivery of services as outlined under this Agreement as required by the City.

4.10 Grantee Policies and Procedures.

4.10.1 Grantee shall maintain written policies and procedures approved by its governing body and shall make copies of all policies and procedures available to the City upon request. At a minimum, written policies shall exist in the following areas: Financial Management; Subcontracting and/or Procurement; Equal Employment Opportunity; Personnel and Personnel Grievance; Nepotism; Non-Discrimination of Clients; Client Grievance; Drug Free Workplace; the Americans with Disabilities Act; Conflict of Interest; Whistleblower; and Criminal Background Checks.

4.10.2 Grantee shall provide the City with copies of revised Articles of Incorporation and Doing Business As (DBA) certificates (if applicable) within 14 calendar days of receipt of the notice of filing by the Secretary of State's office. Grantee shall provide the City with copies of revised By-Laws within 14 calendar days of their approval by the Grantee's governing body.

4.11 Monitoring and Evaluation.

4.11.1 Grantee agrees that the City or its designee may carry out monitoring and evaluation activities to ensure adherence by the Grantee and Subgrantees to the Program Work Statement, Program Performance Measures, and Program Budget, as well as other provisions of this Agreement. Grantee shall fully cooperate in any monitoring or review by the City and further agrees to designate a staff member to coordinate monitoring and evaluation activities.

4.11.2 The City expressly reserves the right to monitor client-level data related to services provided under this Agreement. If the Grantee asserts that client-level data is legally protected from disclosure to the City, a specific and valid legal reference to this assertion must be provided and is subject to acceptance by the City's Law Department.

4.11.3 Grantee shall provide the City with copies of all evaluation or monitoring reports received from other funding sources during the Agreement Term upon request following the receipt of the final report.

4.11.4 Grantee shall keep on file copies of all notices of Board of Directors meetings, Subcommittee or Advisory Board meetings, and copies of approved minutes of those meetings.

4.12 Financial Audit of Grantee.

4.12.1 In the event Grantee expends \$750,000 or more in a year in federal awards, Grantee shall have a single or program specific audit conducted in accordance with Chapter 200, Subpart F, of Title 2 of the Code of Federal Regulations as required by the Single Audit Act of 1984, as amended (Single Audit Act), and shall submit to the City a complete set of audited financial statements and the auditor's opinion and management letters in accordance with Chapter 200, Subpart F, of Title 2 of the Code of Federal Regulations and any guidance issued by the federal Office of Management and Budget covering Grantee's fiscal year until the end of the term of this Agreement.

4.12.2 If Grantee is not subject to the Single Audit Act, and expends \$750,000 or more during the Grantee's fiscal year, then Grantee shall have a full financial audit performed in accordance with Generally Accepted Auditing Standards (GAAS). If less than \$750,000 is expended, then a financial review is acceptable, pursuant to the requirements of this Agreement.

4.12.3 Grantee shall contract with an independent auditor utilizing a Letter of Engagement. The auditor must be a Certified Public Accountant recognized by the regulatory authority of the State of Texas.

4.12.4 Grantee must submit 1 Board-approved, bound hard copy of a complete financial audit report or financial review report, to include the original auditor Opinion Letter/Independent Auditor's Report within 270 calendar days of the end of Grantee's fiscal year, unless alternative arrangements are approved in writing by the City. The financial audit report or financial review report must include the Management Letter/Internal Controls Letter, if one was issued by the auditor. Grantee may not submit electronic copies of financial audit reports or financial review reports to the City. Financial audit reports or financial review reports must be provided in hard copy, and either mailed or hand-delivered to the City.

4.12.5 The City will contact the independent auditor to verify:

- i. That the auditor completed the financial audit report/financial review report received from the Grantee;
- ii. That the auditor presented the financial audit report/financial review report to the Grantee's Board of Directors or a committee of the Board, and;
- iii. The date the financial audit report/financial review report was presented to the Grantee's Board of Directors or a committee of the Board.

4.12.6 The City will contact the Board Chair to verify that the auditor presented the financial audit report/financial review report to the Grantee's Board of Directors or a committee of the Board.

- i. Grantee's Board Chair must submit a signed and dated copy of the APH Board Certification form to the City as verification.

A signed and dated copy of the APH Board Certification form will be due to the City with the financial audit report/financial review report. The City will deem the financial audit report/financial review report incomplete if the Grantee fails to submit the Board Certification form, as required by this Section.

4.12.7 The inclusion of any Findings or a Going Concern Uncertainty, as defined by Chapter 200, Subpart F, of Title 2 of the Code of Federal Regulations and GAAS, in a Grantee's audit requires the creation and submission to the City of a corrective action plan formally approved by the Grantee's governing board. The plan must be submitted to the City within 60 days after the audit is submitted to the City. Failure to submit an adequate plan to the City may result in the immediate suspension of funding. If adequate improvement related to the audit findings is not documented within a reasonable period of time, the City may provide additional technical assistance, refer the Agreement to the City Auditor for analysis, or move to terminate the Agreement as specified in Section 5 of the Agreement.

4.12.8 The expiration or termination of this Agreement shall in no way relieve the Grantee of the audit requirement set forth in this Section.

4.12.9 Right To Audit By Office of City Auditor.

4.12.9.1 Grantee agrees that the representatives of the Office of the City Auditor, or other authorized representatives of the City, shall have access to, and the right to audit, examine, and copy any and all records of the Grantee related to the performance under this Agreement during normal business hours (Monday – Friday, 8 am – 5 pm). In addition to any other rights of termination or suspension set forth herein, the City shall have the right to immediately suspend the Agreement, upon written notice to Grantee, if Grantee fails to cooperate with this audit provision. The Grantee shall retain all such records for a period of 5 years after the expiration or early termination of this Agreement or until all audit and litigation matters that the City has brought to the attention of the Grantee are resolved, whichever is longer. The Grantee agrees to refund to the City any overpayments disclosed by any such audit.

4.12.9.2 Grantee shall include this audit requirement in any subagreements entered into in connection with this Agreement.

4.13 Ownership of Property.

4.13.1 Ownership title to all capital acquisition, supplies, materials or any other property purchased with funds received under this Agreement and in accordance with the provisions of the Agreement, is vested with the City and such property shall, upon termination of the Agreement, be delivered to the City upon request.

4.13.2 Written notification must be given to the City within 5 calendar days of delivery of nonexpendable property (defined as anything that has a life or utility of more than 1 year and an acquisition cost, including freight, of over \$5,000) in order for the City to effect identification and recording for inventory purposes. Grantee shall maintain adequate accountability and control over such property, maintain adequate property records, perform an annual physical inventory of all such property, and report this information in the Annual Agreement Progress Report, due 60 days after the end of each Program Period, as well as in the Agreement Closeout Summary Report, due 60 days after the end of the Agreement Term.

4.13.3 In the event Grantee's services are retained under a subsequent agreement, and should Grantee satisfactorily perform its obligations under this Agreement, Grantee shall be able to retain possession of non-expendable property purchased under this Agreement for the duration of the subsequent agreement.

4.13.4 Property purchased with City funds shall convey to the Grantee 2 years after purchase, unless notified by the City in writing.

SECTION 5. TERMINATION

5.1 **Right To Assurance.** Whenever one party to the Agreement in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

5.2 **Default.** The Grantee shall be in default under the Agreement if the Grantee (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) fails to provide adequate assurance of performance under the "Right to Assurance" paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Grantee's Offer, or in any report or deliverable required to be submitted by Grantee to the City.

5.3 **Termination For Cause.** In the event of a default by the Grantee, the City shall have the right to terminate the Agreement for cause, by written notice effective 10 calendar days, unless otherwise specified, after the date of such notice, unless the Grantee, within such 10 day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Grantee on probation for a specified period of time within which the Grantee must correct any non-compliance issues. Probation shall not normally be for a period of more than 9 months; however, it may be for a longer period, not to exceed 1 year depending on the circumstances. If the City

determines the Grantee has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Grantee, the City may suspend or debar the Grantee in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Grantee from the City's vendor list for up to 5 years and any Offer submitted by the Grantee may be disqualified for up to 5 years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Grantee's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

5.4 Termination Without Cause. The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon 30 calendar-days prior written notice. Upon receipt of a notice of termination, the Grantee shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Grantee, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

5.5 Fraud. Fraudulent statements by the Grantee on any Offer or in any report or deliverable required to be submitted by the Grantee to the City shall be grounds for the termination of the Agreement for cause by the City and may result in legal action.

SECTION 6. OTHER DELIVERABLES

6.1 Insurance. The following insurance requirements apply.

6.1.1 General Requirements

6.1.1.1 The Grantee shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Agreement and during any warranty period.

6.1.1.2 The Grantee shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Agreement execution and within 14 calendar days after written request from the City.

6.1.1.3 The Grantee must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

6.1.1.4 The Grantee shall not commence work until the required insurance is obtained and has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Grantee hereunder and shall not be construed to be a limitation of liability on the part of the Grantee.

6.1.1.5 The Grantee must maintain and make available to the City, upon request, Certificates of Insurance for all Subgrantees.

6.1.1.6 The Grantee's and all Subgrantees' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

6.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the Grantee's email address, and shall be mailed to the following address:

City of Austin
Austin Public Health
ATTN: Contract Management Team

6.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Agreement, covering both the City and the Grantee, shall be considered primary coverage as applicable.

6.1.1.9 If insurance policies are not written for amounts specified, the Grantee shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

6.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

6.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Grantee.

6.1.1.12 The Grantee shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.

6.1.1.13 The Grantee shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

6.1.1.14 The Grantee shall endeavor to provide the City 30 calendar-days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.

6.1.2 **Specific Coverage Requirements.** The Grantee shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Agreement, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Grantee.

6.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000* for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

- 6.1.2.1.1 Blanket contractual liability coverage for liability assumed under the Agreement and all other Agreements related to the project
- 6.1.2.1.2 Independent Grantee's Coverage
- 6.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period
- 6.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
- 6.1.2.1.5 Thirty calendar-days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
- 6.1.2.1.6 The "City of Austin" listed as an additional insured, Endorsement CG 2010, or equivalent coverage

6.1.2.1.7 If care of a child is provided outside the presence of a legal guardian or parent, Grantee shall provide coverage for sexual abuse and molestation for a minimum limit of \$500,000 per occurrence.

6.1.2.1.8 The policy shall be endorsed to cover injury to a child while the child is in the care of the Grantee or Subgrantee.

* Supplemental Insurance Requirement. If eldercare, childcare, or housing for clients is provided, the required limits shall be \$1,000,000 per occurrence.

6.1.2.2 Business Automobile Liability Insurance.

Minimum limits: \$500,000 combined single limit per occurrence for all owned, hired and non-owned autos

- a. If any form of transportation for clients is provided, coverage for all owned, non-owned, and hired vehicles shall be maintained with a combined single limit of \$1,000,000 per occurrence.
- b. If no client transportation is provided but autos are used within the scope of work, and there are no agency owned vehicles, evidence of Personal Auto Policy coverage from each person using their auto may be provided. The following limits apply for personal auto insurance: \$100,000/\$300,000/\$100,000.

All policies shall contain the following endorsements:

- 6.1.2.2.1. Waiver of Subrogation, Endorsement CA 0444, or equivalent coverage
- 6.1.2.2.2. Thirty calendar-days' Notice of Cancellation, Endorsement CA 0244, or equivalent coverage
- 6.1.2.2.3 The "City of Austin" listed as an additional insured, Endorsement CA 2048, or equivalent coverage

6.1.2.3 Worker's Compensation and Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

- 6.1.2.3.1 The Grantee's policy shall apply to the State of Texas
- 6.1.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage
- 6.1.2.3.3 Thirty calendar-days' Notice of Cancellation, Form WC 420601, or equivalent coverage

6.1.2.4 Professional Liability Insurance.

6.1.2.4.1 Grantee shall provide coverage at a minimum limit of \$500,000 per claim to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

6.1.2.4.2 If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Agreement and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the Agreement.

6.1.2.5 Blanket Crime Policy Insurance. A Blanket Crime Policy shall be required with limits equal to or greater than the sum of all Agreement funds allocated by the City. Acceptance of alternative limits shall be approved by Risk Management.

6.1.2.6 Directors and Officers Insurance. Directors and Officers Insurance with a minimum of not less than \$1,000,000 per claim shall be in place for protection from claims arising out of negligent acts, errors or omissions for directors and officers while acting in their capacities as such. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The coverage shall be continuous for the duration of the Agreement and for not less than 24 months following the end of the Agreement. Coverage, including renewals, shall have the same retroactive date as the original policy applicable to the Agreement or evidence of prior acts or an extended reporting period acceptable to the City may be provided. The Grantee shall, on at least an annual basis, provide the City with a Certificate of Insurance as evidence of such insurance.

6.1.2.7 Property Insurance. If the Agreement provides funding for the purchase of property or equipment the Grantee shall provide evidence of all risk property insurance for a value equivalent to the replacement cost of the property or equipment.

6.1.2.8 Endorsements. The specific insurance coverage endorsements specified above, or their equivalents, must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

6.1.2.9 Certificate. The following statement must be shown on the Certificate of Insurance.

"The City of Austin is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability, auto liability and workers compensation policies."

6.2 Equal Opportunity.

6.2.1 Equal Employment Opportunity. No Grantee or Grantee's agent shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Agreement awarded by the City unless the Grantee has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Grantee shall sign and return the Non-Discrimination Certification attached hereto as Exhibit C. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Agreement and the Grantee's suspension or debarment from participation on future City Agreements until deemed compliant with Chapter 5-4. Any Subgrantees used in the performance of this Agreement and paid with City funds must comply with the same nondiscrimination requirements as the Grantee.

6.2.2 Americans with Disabilities Act (ADA) Compliance. No Grantee, or Grantee's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

6.3 Inspection of Premises. The City has the right to enter Grantee's and Subgrantee's work facilities and premises during Grantee's regular work hours, and Grantee agrees to facilitate a review of the facilities upon reasonable request by the City.

6.4 Rights to Proposal and Contractual Material. All material submitted by the Grantee to the City shall become property of the City upon receipt. Any portions of such material claimed by the Grantee to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

- 6.5 **Publications.** All published material and written reports submitted under the Agreement must be originally developed material unless otherwise specifically provided in the Agreement. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 7. WARRANTIES

7.1 **Authority.** Each party warrants and represents to the other that the person signing this Agreement on its behalf is authorized to do so, that it has taken all action necessary to approve this Agreement, and that this Agreement is a lawful and binding obligation of the party.

7.2 **Performance Standards.** Grantee warrants and represents that all services provided under this Agreement shall be fully and timely performed in a good and workmanlike manner in accordance with generally accepted community standards and, if applicable, professional standards and practices. Grantee may not limit, exclude, or disclaim this warranty or any warranty implied by law, and any attempt to do so shall be without force or effect. If the Grantee is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Agreement from the Grantee, and purchase conforming services from other sources. In such event, the Grantee shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source. Grantee agrees to participate with City staff to update the performance measures.

SECTION 8. MISCELLANEOUS

8.1 **Criminal Background Checks.** Grantee and Subgrantee(s) agree to perform a criminal background check on individuals providing direct client services in programs designed for children under 18 years of age, seniors 55 years of age and older, or persons with Intellectual and Developmental Disabilities (IDD). Grantee shall not assign or allow an individual to provide direct client service in programs designed for children under 18 years of age, seniors 55 years of age and older, or persons with IDD if the individual would be barred from contact under the applicable program rules established by Title 40 of the Texas Administrative Code.

8.2 **Compliance with Health, Safety, and Environmental Regulations.** The Grantee, its Subgrantees, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Grantee shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Grantee's obligations under this paragraph.

8.2.1 The Grantee or Subgrantee(s) seeking an exemption for a food enterprise permit fee must present this signed and executed social services Agreement upon request to the City.
(Source: City of Austin Ordinance 20051201-013)

8.3 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Grantee is observed performing in a manner that the City reasonably believes is in violation of federal, state, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Grantee will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Grantee shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

8.4 Indemnity.

8.4.1 Definitions:

8.4.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable

costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

8.4.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Grantee, their respective agents, officers, employees and Subgrantees; the officers, agents, and employees of such Subgrantees; and third parties); and/or;

8.4.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Grantee, the Grantee's Subgrantees, and third parties),

8.4.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

8.4.2 THE GRANTEE SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE GRANTEE, OR THE GRANTEE'S AGENTS, EMPLOYEES OR SUBGRANTEES, IN THE PERFORMANCE OF THE GRANTEE'S OBLIGATIONS UNDER THE AGREEMENT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE GRANTEE (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

8.5 **Claims.** If any claim, demand, suit, or other action is asserted against the Grantee which arises under or concerns the Agreement, or which could have a material adverse effect on the Grantee's ability to perform hereunder, the Grantee shall give written notice thereof to the City within 10 calendar days after receipt of notice by the Grantee. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

8.6 **Business Continuity.** Grantee warrants that it has adopted a business continuity plan that describes how Grantee will continue to provide services in the event of an emergency or other unforeseen event, and agrees to maintain the plan on file for review by the City. Grantee shall provide a copy of the plan to the City's Agreement Manager upon request at any time during the term of this Agreement, and the requested information regarding the Business Continuity Plan shall appear in the annual Administrative and Fiscal Review document.

8.6.1 Grantee agrees to participate in the City's Emergency Preparedness and Response Plan and other disaster planning processes. Grantee participation includes assisting the City to provide disaster response and recovery assistance to individuals and families impacted by manmade or natural disasters.

8.7 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Agreement shall be in writing and shall be deemed delivered 3 business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, email, or other commercially accepted means. Notices to the City and the Grantee shall be addressed as follows:

To the City:
City of Austin
Austin Public Health
Administrative Services Division

ATTN: Kymerley Maddox,
Assistant Director

To the Grantee:
Front Steps, Inc.

ATTN: Greg McCormack,
Executive Director

With copy to:
City of Austin
Austin Public Health

ATTN: Stephanie Hayden,
Director

8.8 Confidentiality. In order to provide the deliverables to the City, Grantee may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Grantee acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Grantee (including its employees, Subgrantees, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Grantee promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Grantee agrees to use protective measures no less stringent than the Grantee uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

8.9 Advertising. Where such action is appropriate as determined by the City, Grantee shall publicize the activities conducted by the Grantee under this Agreement. Any news release, sign, brochure, or other advertising medium including websites disseminating information prepared or distributed by or for the Grantee shall recognize the City as a funding source and include a statement that indicates that the information presented does not officially represent the opinion or policy position of the City.

8.10 No Contingent Fees. The Grantee warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Grantee for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Agreement without liability and to deduct from any amounts owed to the Grantee, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

8.11 Gratuities. The City may, by written notice to the Grantee, cancel the Agreement without liability if it is determined by the City that gratuities were offered or given by the Grantee or any agent or representative of the Grantee to any officer or employee of the City with a view toward securing the Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Agreement. In the event the Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Grantee in providing such gratuities.

8.12 Prohibition Against Personal Interest in Agreements. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Agreement resulting from that solicitation. Any willful violation of this Section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Grantee shall render the Agreement voidable by the City.

8.13 Independent Grantee. The Agreement shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Grantee's services shall be those of an independent Grantee. The Grantee agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City.

8.14 Assignment-Delegation. The Agreement shall be binding upon and inure to the benefit of the City and the Grantee and their respective successors and assigns, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Grantee without the prior

written consent of the City. Any attempted assignment or delegation by the Grantee shall be void unless made in conformity with this paragraph. The Agreement is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Agreement.

8.15 Waiver. No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Grantee or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

8.16 Modifications. The Agreement can be modified or amended only by a written, signed agreement by both parties. No pre-printed or similar terms on any Grantee invoice, order, or other document shall have any force or effect to change the terms, covenants, and conditions of the Agreement.

8.17 Interpretation. The Agreement is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control, unless otherwise defined in the Agreement.

8.18 Dispute Resolution.

8.18.1 If a dispute arises out of or relates to the Agreement, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, 1 senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

8.18.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Grantee agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or an Agreement interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Grantee will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

8.19 Minority and Women Owned Business Enterprise (MBE/WBE) Procurement Program

MBE/WBE goals do not apply to this Agreement.

8.20 Living Wage Policy

[Reserved]

8.21 Subgrantees.

8.21.1 Work performed for the Grantee by a Subgrantee shall be pursuant to a written Agreement between the Grantee and Subgrantee. The terms of the Subagreement may not conflict with the terms of the Agreement, and shall contain provisions that:

8.21.1.1 require that all deliverables to be provided by the Subgrantee be provided in strict accordance with the provisions, specifications and terms of the Agreement. The City may require specific documentation to confirm Subgrantee compliance with all aspects of this Agreement.

8.21.1.2 prohibit the Subgrantee from further subcontracting any portion of the Agreement without the prior written consent of the City and the Grantee. The City may require, as a condition to such further subcontracting, that the Subgrantee post a payment bond in form, substance and amount acceptable to the City;

8.21.1.3 require Subgrantees to submit all requests for payment and applications for payments, including any claims for additional payments, damages or otherwise, to the Grantee in sufficient time to enable the Grantee to include the same with its invoice or application for payment to the City in accordance with the terms of the Agreement;

8.21.1.4 require that all Subgrantees obtain and maintain, throughout the term of their Subagreement, insurance in the type required by this Agreement, and in amounts appropriate for the amount of the Subagreement, with the City being a named insured as its interest shall appear;

8.21.1.5 require that the Subgrantees indemnify and hold the City harmless to the same extent as the Grantee is required to indemnify the City; and

8.21.1.6 maintain and make available to the City, upon request, Certificates of Insurance for all Subgrantees.

8.21.2 The Grantee shall be fully responsible to the City for all acts and omissions of the Subgrantees just as the Grantee is responsible for the Grantee's own acts and omissions. Nothing in the Agreement shall create for the benefit of any such Subgrantee any contractual relationship between the City and any such Subgrantee, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subgrantee except as may otherwise be required by law.

8.21.3 The Grantee shall pay each Subgrantee its appropriate share of payments made to the Grantee not later than 10 days after receipt of payment from the City.

8.22 **Jurisdiction and Venue.** The Agreement is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Agreement shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

8.23 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

8.24 **Holidays.** The following holidays are observed by the City:

<u>HOLIDAY</u>	<u>DATE OBSERVED</u>
New Year's Day	January 1
Martin Luther King, Jr's Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

8.25 Survivability of Obligations. All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement.

8.26 Non-Suspension or Debarment Certification. The City is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from federal, state, or City Agreements. By accepting an Agreement with the City, the Grantee certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the Exclusions records at SAM.gov, the State of Texas, or the City of Austin.

8.27 Public Information Act. Grantee acknowledges that the City is required to comply with Chapter 552 of the Texas Government Code (Public Information Act). Under the Public Information Act, this Agreement and all related information within the City's possession or to which the City has access are presumed to be public and will be released unless the information is subject to an exception described in the Public Information Act.

8.28 HIPAA Standards. As applicable, Grantee and Subgrantees are required to develop and maintain administrative safeguards to ensure the confidentiality of all protected client information, for both electronic and non-electronic records, as established in the Health Insurance Portability and Accountability Act (HIPAA) Standards CFR 160 and 164, and to comply with all other applicable federal, state, and local laws and policies applicable to the confidentiality of protected client information. Grantee must maintain HIPAA-compliant Business Associate agreements with each entity with which it may share any protected client information.

8.28.1 Business Associate Agreement. If performance of this Agreement involves the use or disclosure of Protected Health Information (PHI), as that term is defined in 45 C.F.R. § 160.103, then Grantee acknowledges and agrees to comply with the terms and conditions contained in the Business Associate Agreement, attached as Exhibit E.

8.29 Political and Sectarian Activity. No portion of the funds received by the Grantee under this Agreement shall be used for any political activity (including, but not limited to, any activity to further the election or defeat of any candidate for public office) or any activity undertaken to influence the passage, defeat, or final content of legislation; or for any sectarian or religious purposes.

8.30 Culturally and Linguistically Appropriate Standards (CLAS). The City is committed to providing effective, equitable, understandable and respectful quality care and services that are responsive to diverse cultural beliefs and practices, preferred languages, health literacy, and other communication needs. This

commitment applies to services provided directly by the City as well as services provided through its Grantees. Grantee and its Subgrantees agree to implement processes and services in a manner that is culturally and linguistically appropriate and competent. Guidance on adopting such standards and practices are available at the U.S. Department of Health and Human Services Office of Minority Health's website at: <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=1&lvlid=6>.

In some instances, failure to provide language assistance services may have the effect of discriminating against persons on the basis of their natural origin. Guidelines for serving individuals with Limited English Proficiency (LEP) are available at <https://www.lep.gov/faqs/faqs.html>.

In witness whereof, the parties have caused duly authorized representatives to execute this Agreement on the dates set forth below.

FRONT STEPS, INC.

Signature: 

Name: Greg McCormack
Printed Name

Title: Executive Director

Date: 2/1/19

CITY OF AUSTIN

Signature: 

Name: JOHN HILBURN
PURCHASING OFFICE

Date: 02/21/19

EXHIBITS

Exhibit A – Program Forms

- A.1 Program Work Statement
- A.3 Client Eligibility Requirements

Exhibit B – Program Budget Forms

- B.1 Program Budget and Narrative

Exhibit C – Equal Employment/Fair Housing Office/Non-Discrimination Certification

Exhibit D – Required ESG Program Forms

- D.1 ESG Reporting Requirements
- D.2 ESG Regulations (24 CFR Part 576)
- D.3 ESG Homeless Eligibility Form
- D.4 ESG Program Standards

Exhibit E – Business Associate Agreement

Exhibit F – Federal Award Identification

Program Work Statement

Contract Start Date

10/1/2018

Contract End Date

9/30/2019

Program Goals And Objectives

Based on the belief that all people deserve the dignity of a safe place to call home, Front Steps' mission is to provide a pathway home for our neighbors experiencing homelessness by offering emergency shelter, affordable housing, recuperative medical care, supportive services, and promote community awareness. Having this mission in mind, Front Steps manages the ARCH facility to serve multiple purposes, including: operating a safe and clean shelter that provides a respite from the elements, functioning as a place for clients to meet several of their basic needs, and serving as an entry portal to a variety of programs and services dedicated to assisting and empowering clients to achieve self-sufficiency and resolve their homelessness as rapidly as possible.

Program Clients Served

Front Steps uses the U.S. Department of Housing and Urban Development (HUD) definition of "homelessness" to verify that persons receiving Emergency Solutions Grant (ESG)-funded services live in a situation described by HUD as "homeless," and Front Steps also uses the federal definition of "chronically homeless" to determine if persons receiving ESG-funded services are classified as "chronically homeless." Front Steps documents clients' eligibility and classification using HUD's definitions on a "Homeless Eligibility Form" approved by the City of Austin. Front Steps is aware of continuing changes in the definition of chronic homelessness as a result of the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act and receives and discusses updates regularly at Continuum of Care (CoC) meetings within the community.

Compliance with APH Eligibility Criteria: The eligibility criteria for the program is homelessness, so the agency will ensure that all client files contain a Homeless Eligibility form and are entered into HMIS. Identity, residency, and income requirements, as well as annual recertification of homelessness are not required for shelter clients.

Program Services And Delivery

The City of Austin receives Emergency Solutions Grants (ESG) funds from the Department of Housing and Urban Development to provide Emergency Shelter at the Austin Resource Center for the Homeless. Eligible costs include: Maintenance, rent, security, fuel, equipment, insurance, utilities, food, furnishings, supplies necessary for shelter operation and hotel/motel vouchers. The City of Austin uses ESG funds for shelter maintenance, security staff, and food.

Emergency Night Shelter: The overnight shelter is available for single, adult men experiencing homelessness. There are 90 sleeping mats and 100 bunks for a total of 190 sleeping units. Front Steps serves dinner to all who utilize ENS. A light breakfast is available to all ARCH overnight clients, depending upon available funding.

Maintenance and Operations of the Austin Resource Center for the Homeless

The City of Austin - Austin Public Health Department (APH) contracts with Front Steps to serve as the operator of the Austin Resource Center for the Homeless (ARCH), located at 500 East 7th Street, Austin, TX 78701.

As the operator of the ARCH, Front Steps is responsible for overall operations, maintenance, and oversight of the facility, as well as the activities located therein. Front Steps manages a preventative maintenance schedule and submits updated maintenance reports on a monthly to APH staff for review.

Front Steps is not responsible for managing the lease between the City of Austin and the Healthcare District for the operation of the Health Care for the Homeless ARCH CommunityCare Clinic.

System for Collecting and Reporting Program Data

All program data will be collected and reported through the ARCH Agreement. Front Steps will provide required quarterly performance reporting, end of year reporting and a monthly "HMIS Data Quality Report" with each submitted pay request.

Performance Evaluation

Program Evaluation will be addressed in the ARCH Agreement.

Quality Improvement

Created 1/15/2019 3:36:00 PM

Last Modified, If Applicable 1/22/2019 12:27:00 PM

Program Work Statement

Contract Start Date 10/1/2018 ***Contract End Date*** 9/30/2019

Quality improvement systems will be addressed in the ARCH Agreement.

Service Coordination with Other Agencies

Front Steps will address service cooperation in the ARCH Agreement.

Service Collaboration with Other Agencies

No collaborations are funded by this contract.

Community Planning Activities

Designated Front Steps' directors, managers and coordinators are members of the following ECHO committees and subcommittees: Executive, Membership, Program and Evaluation, HMIS, Continuum of Care, Veterans, Housing, and Education. Front Steps has participated in planning efforts regarding the City Council's efforts to create more affordable housing, the local 100,000 Homes Campaign, Ending Veteran Homelessness, Ending Youth Homelessness, Downtown Homeless Solutions, and other planning efforts. Front Steps also works collaboratively with the Downtown Austin Alliance, Sixth Street Association and Downtown Neighborhood Association on a variety of issues and initiatives such as the "I Live Here I Give Here" public education campaign that encourages people to give responsibly. In addition to these activities the Front Steps' Good Neighbor Program provides additional day resources to encourage those experiencing homelessness to utilize the ARCH during the day rather than panhandling and congregating in heavily trafficked downtown areas. Front Steps works closely with ECHO and other community partners in gathering public support of PSH and delivery of HUD-funded housing.

City of Austin Health and Human Services Social Service Contracts Client Eligibility Requirements

UNLESS OTHERWISE STATED IN THE CONTRACT WORK STATEMENT, THESE REQUIREMENTS APPLY TO ALL CLIENTS SERVED WITH CITY SOCIAL SERVICES FUNDING.

GENERAL

- Eligibility requirements for clients served under grant contracts will be determined by the grantor.
- Agency must maintain a record of client eligibility (e.g. client file or electronic record) that includes documentation of:
 - ◆ Annual certification of client eligibility
 - ◆ Services provided to client
- Agency must recertify client when notified of a change in family circumstances (e.g. family income, residence, and/or family composition)
- Unless specified by Grant/Funding Source, re-certification of clients is required not less than once every 12 months (unless required earlier by a change in family circumstances)
- Homeless clients:
 - ◆ If the program eligibility requires homeless status, the residency requirements and income requirements do not apply
 - ◆ Homeless status must be documented by a signed (1) Homeless Eligibility Form or Homeless Self-Declaration Form and (2) entry into Homeless Management Information System (HMIS) database. These forms must be developed by the agency and be approved by the City contract manager.
- Other Client populations:
 - ◆ Clients in programs serving victims of violence are not subject to residency or income requirements
 - ◆ Eligibility exceptions for any other type of clients and/or documentation situations must be described in Contract Work Statement
- Date of receipt by agency must be indicated on all documentation in client file

IDENTITY

- Client must provide proof of identity in order to receive City-funded services, documented by:
 - ◆ A government –issued identification; or
 - ◆ A signed Self-Declaration of Identity supported by client residency documentation

RESIDENCY

- City-funded clients must be a resident of the City of Austin (Full Purpose Jurisdiction) and/or Travis County
 - ◆ Residence must be documented by proof of address that includes client name (e.g. City utility bill, lease, letter from landlord, etc.)
 - ◆ Residency eligibility must be verified by one or more of the following sources:
 - Austin GIS Jurisdictions Web Map (<http://www.austintexas.gov/gis/JurisdictionsWebMap/>)
 - Travis County Appraisal District website (<http://www.traviscad.org>)

City of Austin Health and Human Services

Social Service Contracts

Client Eligibility Requirements

- U.S. Postal Service website (verification of County only) (www.usps.com)

INCOME

- Client intake form must reflect wages/income of all family members 18 years old or older living in the household
- Determination of Family Size:
 - ♦ For the purposes of determining eligibility for City-funded services, a family unit consists of:
 - A person living alone:
 - An adult living alone
 - A minor child living alone or with others who are not responsible for the child's support
 - Two or more persons living together who are wholly or partially responsible for the support of the other person/people:
 - Two persons in a domestic partnership, or legal or common-law marriage
 - One or both legal parents and minor children
 - One or both adult caretakers of minors and the caretaker(s)'s minor children. Note: a caretaker is one or both adults(s) who performs parental functions (provision of food, clothing, shelter, and supervision) for a minor.
- Family income must be 200% or less of current Federal Poverty Income Guidelines (FPIG) to be eligible for City-funded services; agency must update its FPIG categories when Federal figures change. Income inclusions and exclusions are based on Texas Administrative Code §5.19 and are as follows:
 - (1) **Included Income:**
 - (A) Temporary Assistance for Needy Families (TANF);
 - (B) Money, wages and salaries before any deductions;
 - (C) Net receipts from non-farm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses);
 - (D) Regular payments from social security, including Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI);
 - (E) Railroad retirement;
 - (F) Unemployment compensation;
 - (G) Strike benefits from union funds;
 - (H) Worker's compensation;
 - (I) Training stipends;
 - (J) Alimony;
 - (K) Military family allotments;
 - (L) Private pensions;
 - (M) Government employee pensions (including military retirement pay);
 - (N) Regular insurance or annuity payments; and
 - (O) Dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts; and net gambling or lottery winnings.
 - (2) **Excluded Income:**
 - (A) Capital gains; any assets drawn down as withdrawals from a bank;
 - (B) The sale of property, a house, or a car;
 - (C) One-time payments from a welfare agency to a family or person who is in temporary financial difficulty;

City of Austin Health and Human Services Social Service Contracts Client Eligibility Requirements

- (D) Tax refunds, gifts, loans, and lump-sum inheritances;
- (E) One-time insurance payments or compensation for injury;
- (F) Non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;
- (G) Food or housing received in lieu of wages;
- (H) The value of food and fuel produced and consumed on farms;
- (I) The imputed value of rent from owner-occupied non-farm or farm housing;
- (J) Federal non-cash benefit programs as Medicare, Medicaid, Food Stamps, and school lunches;
- (K) Housing assistance and combat zone pay to the military;
- (L) Veterans (VA) Disability Payments;
- (M) College scholarships, Pell and other grant sources, assistantships, fellowships and work study, VA Education Benefits (GI Bill); and
- (N) Child support payments.

- Client income amounts must reflect *Gross Income*, before any deductions
- If any adult family member has no income, a Self-Declaration of No Income form is required for that individual
- Income documentation requirement:
 - ❖ Programs providing financial assistance to or on behalf of clients (including but not limited to rent, utilities, arrears, child care, tuition, occupational training): the client file must include primary eligibility sources; declaration of eligibility for another program (e.g., TANF, Free/Reduced/School Lunch Program) is not adequate documentation of eligibility
 - ❖ Programs which do not provide financial assistance to or on behalf of clients: the client file must include primary eligibility sources or a self-declaration of income form

Any question about eligibility criteria not addressed here or for which the contractor needs clarification must be referred to the contractor's City contract manager. The City has final authority to declare an individual eligible or not eligible for City-funded services based on the criteria in this document.

Program Budget and Narrative

Program Start 10/1/2018

Program End 9/30/2019

	<i>City Share</i>	<i>Other</i>	<i>Total</i>
<i>Salary plus Benefits</i>	\$98,184.00	\$0.00	\$98,184.00
<i>General Operations Expenses</i>	\$98,950.00	\$0.00	\$98,950.00
<i>Program Subgrantees</i>	\$0.00	\$0.00	\$0.00
<i>Staff Travel</i>	\$0.00	\$0.00	\$0.00
<i>Conferences</i>	\$0.00	\$0.00	\$0.00
<i>Operations SubTotal</i>	\$98,950.00	\$0.00	\$98,950.00
<i>Food and Beverages for Clients</i>	\$116,788.00	\$0.00	\$116,788.00
<i>Financial Direct Assistance to Clients</i>	\$0.00	\$0.00	\$0.00
<i>Other Assistance</i>	Please Specify	Please Specify	Please Specify
<i>Other Assistance Amount</i>	\$0.00	\$0.00	\$0.00
<i>Direct Assistance SubTotal</i>	\$116,788.00	\$0.00	\$116,788.00
<i>Capital Outlay Amount</i>	\$0.00	\$0.00	\$0.00
<i>Total</i>	\$313,922.00	\$0.00	\$313,922.00

Detailed Budget Narrative**Salaries plus Benefits**

Maintenance staff for emergency shelter operations

General Op Expenses

Security Guards for the Shelter

Program Subgrantees**Staff Travel****Conferences****Food and Beverage**

Food for clients in the overnight shelter.

Financial Assistance**Other Assistance****Capital Outlay**

**City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION**

**City of Austin, Texas
Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin
Minimum Standard Non-Discrimination in Employment Policy:**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for

addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 1 day of February, 2017

CONTRACTOR

Authorized
Signature

Title

Trant Steps
[Signature]
Executive Director

**ESG Reporting Requirements
City of Austin Health and Human Services Department
Front Steps ESG ARCH**

FY 2018-2019

All the following client-related required requirements 1. HMIS data entry and 3. Quarterly Reporting, will be included in the Front Steps ARCH Contract FY 2018-19.

1. Homeless Management Information Systems (HMIS)

Organizations receiving funding from the HUD Emergency Solutions Grant or City of Austin for homelessness prevention and homeless intervention services are required to utilize the Local Homeless Management Information System (HMIS) to track and report client information for individuals who are at risk of homelessness or who are homeless. A high level of data quality is required. The Annual Report must identify compliance levels with all of the requirements listed below as well as any feedback regarding the HMIS system.

a. ESG-Specific Requirements Include

- i. Entering client data into HMIS as per the guidelines outlined in an agreement with ECHO HMIS and under the requirements of the Austin/Travis County HMIS Data Quality Assurance Plan.
- ii. ESG-funded programs will participate in the centralized or coordinated assessment system in HMIS, as required under § 576.400(d), the ESG Rapid Rehousing program will accept referrals through Coordinated Entry.
- iii. Utilizing the ESG eligibility form to determine homeless eligibility.
- iv. Demographic data collected in the ESG Demographic Form
- v. HUD 40118 form or other required form required for Emergency Solutions Grants
- vi. Submission of HUD reporting information for the Consolidated Plan, Action Plan and Consolidated Annual Performance and Evaluation Report (CAPER).

b. Other HMIS Requirements

Organizations receiving funding from the City of Austin for homelessness prevention and homeless intervention services are required to utilize the local Homeless Management Information System (HMIS) to track and report client information for individuals who are at risk of homelessness or who are homeless. A high level of data quality is required. The Ending Community Homelessness Coalition (ECHO) currently serves as the local HMIS administrator.

Requirements Include:

- i. All settings for client records will be in accordance with HMIS policy in order to reduce duplication of records and improve service coordination
- ii. HMIS user licenses must be purchased for staff entering data into City-funded programs (may use City funds for licenses)
- iii. Organizations must have an ECHO HMIS Memorandum of Understanding

- iv. Data quality report(s) submitted monthly with a rating of “Excellent” or “Acceptable”
- v. Participation in Annual Point-in-Time Count, Annual Homeless Assessment Report (AHAR), and other required HUD reporting
- vi. Participation in the required annual training for each licensed user as well as attendance at required City-sponsored training(s) regarding HMIS and CTK ODM System

Periodic reporting to the City will include levels of compliance with all requirements listed above as well as any feedback regarding the HMIS system.

If data quality reports fall below minimum standards, payments may be withheld until reports improve to “Excellent” or “Acceptable” ratings.

These requirements also pertain to all Subcontractors serving people who are homeless under this agreement.

2. Monthly Reporting

- a. Current Month Matching Funds Statement must be submitted monthly in CTK prior to submittal of the Expenditure Report and Payment Request. The contractor is required to expend and document Matching Funds against payments to be received under this Agreement.
- b. Payment Requests and Expenditure Reports (All Funding Sources) must be submitted within fifteen (15) calendar days after the end of the preceding month with backup uploaded to CTK - including detailed reports of the actual month and year to date expenditures. The backup should be attached the Expenditure Reports and should include: Monthly Task Order Tracking Sheet for grant costs with appropriate backup from the Digital Express Reports (DXR) and an HMIS Data Quality Report (can be submitted separately as an uploaded document).

3. Quarterly Reporting

- a. This program reports Quarterly Performance Reports through the ARCH Agreement.
- b. ESG Demographic Report must be submitted within fifteen (15) calendar days after the end of the preceding quarter to the contract manager. The data from this report should be able to be extracted from HMIS. Sections 4-8 and 10 must be completed by all ESG programs that serve clients.

4. Annual Close-Out Reporting

- a. For contracts that contain renewal/extension options, an annual Contract Progress Report, using the forms shown at <http://www.cktodm.com/austin/>, shall be

- completed by the Grantee and submitted to the City within 60 calendar days following the end of each Program Period identified in Section 4.1.2 of the Contract boilerplate.
- b. For those Agreements that are ending a Contract Closeout Summary Report using the forms shown at <http://www.ckodm.com/austin/> shall be completed by the Grantee and submitted to the City within 30 calendar days following the expiration or termination of this Agreement. Any encumbrances of funds incurred prior to the date of termination of this Agreement shall be subject to verification by the City. Upon termination of this Agreement, any unused funds, unobligated funds, rebates, credits, or interest earned on funds received under this Agreement shall be returned to the City.
 - c. The Contract Close-Out Report must contain all information that the City requires during the normal Contract Close-Out Report or, if the Contract is ongoing but the Program Period had ended, all of the information the City requires for their Contract Progress Report.

Title 24: Housing and Urban Development

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

Section Contents

Subpart A—General Provisions

- § 576.1 Applicability and purpose.
- § 576.2 Definitions.
- § 576.3 Allocation of funding.

Subpart B—Program Components and Eligible Activities

- § 576.100 General provisions and expenditure limits.
- § 576.101 Street outreach component.
- § 576.102 Emergency shelter component.
- § 576.103 Homelessness prevention component.
- § 576.104 Rapid re-housing assistance component.
- § 576.105 Housing relocation and stabilization services.
- § 576.106 Short-term and medium-term rental assistance.
- § 576.107 HMIS component.
- § 576.108 Administrative activities.
- § 576.109 Indirect costs.

Subpart C—Award and Use of Funds

- § 576.200 Submission requirements and grant approval.
- § 576.201 Matching requirement.
- § 576.202 Means of carrying out grant activities.
- § 576.203 Obligation, expenditure, and payment requirements.

Subpart D—Reallocations

- § 576.300 In general.
- § 576.301 Metropolitan cities and urban counties.
- § 576.302 States.
- § 576.303 Territories.

Subpart E—Program Requirements

- § 576.400 Area-wide systems coordination requirements.
- § 576.401 Evaluation of program participant eligibility and needs.
- § 576.402 Terminating assistance.
- § 576.403 Shelter and housing standards.
- § 576.404 Conflicts of interest.
- § 576.405 Homeless participation.
- § 576.406 Faith-based activities.
- § 576.407 Other Federal requirements.
- § 576.408 Displacement, relocation, and acquisition.

Subpart F—Grant Administration

- § 576.500 Recordkeeping and reporting requirements.
 - § 576.501 Enforcement.
-

Authority: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

Source: 76 FR 75974, Dec. 5, 2011, unless otherwise noted.

Subpart A—General Provisions

§ 576.1 Applicability and purpose.

This part implements the Emergency Solutions Grants (ESG) program authorized by subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371–11378). The program authorizes the Department of Housing and Urban Development (HUD) to make grants to States, units of general purpose local government, and territories for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain expenses related to operating emergency shelters, for essential services related to emergency shelters and street outreach for the homeless, and for homelessness prevention and rapid re-housing assistance.

§ 576.2 Definitions.

At risk of homelessness means:

(1) An individual or family who:

(i) Has an annual income below 30 percent of median family income for the area, as determined by HUD;

(ii) Does not have sufficient resources or support networks, e.g., family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the "homeless" definition in this section; and

(iii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by Federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than 1.5 persons reside per room, as defined by the U.S. Census Bureau;

(F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan;

(2) A child or youth who does not qualify as "homeless" under this section, but qualifies as "homeless" under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as "homeless" under this section, but qualifies as "homeless" under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

Consolidated plan means a plan prepared in accordance with 24 CFR part 91. An *approved consolidated plan* means a consolidated plan that has been approved by HUD in accordance with 24 CFR part 91.

Continuum of Care means the group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers; victim service providers; faith-based organizations; governments; businesses; advocates; public housing agencies; school districts; social service providers; mental health agencies; hospitals; universities; affordable housing developers; law enforcement; organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area.

Emergency shelter means any facility, the primary purpose of which is to provide a temporary shelter for the homeless in general or for specific populations of the homeless and which does not require occupants to sign leases or occupancy agreements. Any project funded as an emergency shelter under a Fiscal Year 2010 Emergency Solutions grant may continue to be funded under ESG.

Homeless means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

- (i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
- (ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or
- (iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

- (i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
- (ii) No subsequent residence has been identified; and
- (iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

- (i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);
- (ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;
- (iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and
- (iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

- (i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;
- (ii) Has no other residence; and
- (iii) Lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, to obtain other permanent housing.

Homeless Management Information System (HMIS) means the information system designated by the Continuum of Care to comply with the HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at-risk of homelessness.

Metropolitan city means a city that was classified as a metropolitan city under 42 U.S.C. 5302(a) for the fiscal year immediately preceding the fiscal year for which ESG funds are made available. This term includes the District of Columbia.

Private nonprofit organization means a private nonprofit organization that is a secular or religious organization described in section 501(c) of the Internal Revenue Code of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. A private nonprofit organization does not include a governmental organization, such as a public housing agency or housing finance agency.

Program income shall have the meaning provided in 24 CFR 85.25. Program income includes any amount of a security or utility deposit returned to the recipient or subrecipient.

Program participant means an individual or family who is assisted under ESG program.

Program year means the consolidated program year established by the recipient under 24 CFR part 91.

Recipient means any State, territory, metropolitan city, or urban county, or in the case of reallocation, any unit of general purpose local government that is approved by HUD to assume financial responsibility and enters into a grant agreement with HUD to administer assistance under this part.

State means each of the several States and the Commonwealth of Puerto Rico.

Subrecipient means a unit of general purpose local government or private nonprofit organization to which a recipient makes available ESG funds.

Territory means each of the following: the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

Unit of general purpose local government means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

Urban county means a county that was classified as an urban county under 42 U.S.C. 5302(a) for the fiscal year immediately preceding the fiscal year for which ESG funds are made available.

Victim service provider means a private nonprofit organization whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. This term includes rape crisis centers, battered women's shelters, domestic violence transitional housing programs, and other programs.

§ 576.3 Allocation of funding.

(a) *Territories.* HUD will set aside for allocation to the territories up to 0.2 percent, but not less than 0.1 percent, of the total amount of each appropriation under this part in any fiscal year. HUD will allocate this set-aside amount to each territory based on its proportionate share of the total population of all territories and its rate of compliance with the most recent expenditure deadline under §576.203.

(b) *States, metropolitan cities, and urban counties.* HUD will allocate the amounts that remain after the set-aside to territories under paragraph (a) of this section to States, metropolitan cities, and urban counties, as follows:

(1) HUD will provide that the percentage of the total amount available for allocation to each State, metropolitan city, or urban county is equal to the percentage of the total amount available under section 106 of the Housing and Community Development Act of 1974 for the prior fiscal year that was allocated to that State, metropolitan city, or urban county.

(2) Except as otherwise provided by law, if the amount a metropolitan city or urban county would be allocated under paragraph (b)(1) is less than 0.05 percent of the total fiscal year appropriation for ESG, that amount will be added to the allocation for the State in which the city or county is located.

(c) *Notification of allocation amount.* HUD will notify each State, metropolitan city, urban county, and territory that is eligible to receive an allocation under this section of the amount of its allocation.

Subpart B—Program Components and Eligible Activities

§ 576.100 General provisions and expenditure limits.

(a) ESG funds may be used for five program components: street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, and HMIS; as well as administrative activities. The five program components and the eligible activities that may be funded under each are set forth in §576.101 through §576.107. Eligible administrative activities are set forth in §576.108.

(b) The total amount of the recipient's fiscal year grant that may be used for street outreach and emergency shelter activities cannot exceed the greater of:

(1) 60 percent of the recipient's fiscal year grant; or

(2) The amount of Fiscal Year 2010 grant funds committed for homeless assistance activities.

(c) The total amount of ESG funds that may be used for administrative activities cannot exceed 7.5 percent of the recipient's fiscal year grant.

(d) Subject to the cost principles in OMB Circulars A-87 (2 CFR 225) and A-122 (2 CFR 230) and other requirements in this part, employee compensation and other overhead costs directly related to carrying out street outreach, emergency shelter, homelessness prevention, rapid re-housing, and HMIS are eligible costs of those program components. These costs are not subject to the expenditure limit in paragraph (c) of this section.

§ 576.101 Street outreach component.

(a) *Eligible costs.* Subject to the expenditure limit in §576.100(b), ESG funds may be used for costs of providing essential services necessary to reach out to unsheltered homeless people; connect them with emergency shelter, housing, or critical services; and provide urgent, nonfacility-based care to unsheltered homeless people who are unwilling or unable to access emergency shelter, housing, or an appropriate health facility. For the purposes of this section, the term "unsheltered homeless people" means individuals and families who qualify as homeless under paragraph (1)(i) of the "homeless" definition under §576.2. The eligible costs and requirements for essential services consist of:

(1) *Engagement.* The costs of activities to locate, identify, and build relationships with unsheltered homeless people and engage them for the purpose of providing immediate support, intervention, and connections with homeless assistance programs and/or mainstream social services and housing programs. These activities consist of making an initial assessment of needs and eligibility; providing crisis counseling; addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries; and actively connecting and providing information and referrals to programs targeted to

homeless people and mainstream social services and housing programs, including emergency shelter, transitional housing, community-based services, permanent supportive housing, and rapid re-housing programs. Eligible costs include the cell phone costs of outreach workers during the performance of these activities.

(2) *Case management.* The cost of assessing housing and service needs, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant. Eligible services and activities are as follows: using the centralized or coordinated assessment system as required under §576.400(d); conducting the initial evaluation required under §576.401(a), including verifying and documenting eligibility; counseling; developing, securing and coordinating services; obtaining Federal, State, and local benefits; monitoring and evaluating program participant progress; providing information and referrals to other providers; and developing an individualized housing and service plan, including planning a path to permanent housing stability.

(3) *Emergency health services.*

(i) Eligible costs are for the direct outpatient treatment of medical conditions and are provided by licensed medical professionals operating in community-based settings, including streets, parks, and other places where unsheltered homeless people are living.

(ii) ESG funds may be used only for these services to the extent that other appropriate health services are inaccessible or unavailable within the area.

(iii) Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate emergency medical treatment; and providing medication and follow-up services.

(4) *Emergency mental health services.* (i) Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions operating in community-based settings, including streets, parks, and other places where unsheltered people are living.

(ii) ESG funds may be used only for these services to the extent that other appropriate mental health services are inaccessible or unavailable within the community.

(iii) Mental health services are the application of therapeutic processes to personal, family, situational, or occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances.

(iv) Eligible treatment consists of crisis interventions, the prescription of psychotropic medications, explanation about the use and management of medications, and combinations of therapeutic approaches to address multiple problems.

(5) *Transportation.* The transportation costs of travel by outreach workers, social workers, medical professionals, or other service providers are eligible, provided that this travel takes place during the provision of services eligible under this section. The costs of transporting unsheltered people to emergency shelters or other service facilities are also eligible. These costs include the following:

(i) The cost of a program participant's travel on public transportation;

(ii) If service workers use their own vehicles, mileage allowance for service workers to visit program participants;

(iii) The cost of purchasing or leasing a vehicle for the recipient or subrecipient in which staff transports program participants and/or staff serving program participants, and the cost of gas, insurance, taxes and maintenance for the vehicle; and

(iv) The travel costs of recipient or subrecipient staff to accompany or assist program participants to use public transportation.

(6) *Services for special populations.* ESG funds may be used to provide services for homeless youth, victim services, and services for people living with HIV/AIDS, so long as the costs of providing these services are eligible under paragraphs (a)(1) through (a)(5) of this section. The term *victim services* means services that assist program participants who are victims of domestic violence, dating violence, sexual assault, or stalking, including services offered by rape crisis centers and domestic violence shelters, and other organizations with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(b) *Minimum period of use.* The recipient or subrecipient must provide services to homeless individuals and families for at least the period during which ESG funds are provided.

(c) *Maintenance of effort.*

(1) If the recipient or subrecipient is a unit of general purpose local government, its ESG funds cannot be used to replace funds the local government provided for street outreach and emergency shelter services during the immediately preceding 12-month period, unless HUD determines that the unit of general purpose local government is in a severe financial deficit.

(2) Upon the recipient's request, HUD will determine whether the unit of general purpose local government is in a severe financial deficit, based on the recipient's demonstration of each of the following:

(i) The average poverty rate in the unit of general purpose local government's jurisdiction was equal to or greater than 125 percent of the average national poverty rate, during the calendar year for which the most recent data are available, as determined according to information from the U.S. Census Bureau.

(ii) The average per-capita income in the unit of general purpose local government's jurisdiction was less than 75 percent of the average national per-capita income, during the calendar year for which the most recent data are available, as determined according to information from the Census Bureau.

(iii) The unit of general purpose local government has a current annual budget deficit that requires a reduction in funding for services for homeless people.

(iv) The unit of general purpose local government has taken all reasonable steps to prevent a reduction in funding of services for homeless people. Reasonable steps may include steps to increase revenue generation, steps to maximize cost savings, or steps to reduce expenditures in areas other than services for homeless people.

§ 576.102 Emergency shelter component.

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(a) *General.* Subject to the expenditure limit in §576.100(b), ESG funds may be used for costs of providing essential services to homeless families and individuals in emergency shelters, renovating buildings to be used as emergency shelter for homeless families and individuals, and operating emergency shelters.

(1) *Essential services.* ESG funds may be used to provide essential services to individuals and families who are in an emergency shelter, as follows:

(i) *Case management.* The cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant is eligible. Component services and activities consist of:

(A) Using the centralized or coordinated assessment system as required under §576.400(d);

(B) Conducting the initial evaluation required under §576.401(a), including verifying and documenting eligibility;

(C) Counseling;

(D) Developing, securing, and coordinating services and obtaining Federal, State, and local benefits;

(E) Monitoring and evaluating program participant progress;

(F) Providing information and referrals to other providers;

(G) Providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault, and stalking; and

(H) Developing an individualized housing and service plan, including planning a path to permanent housing stability.

(ii) *Child care.* The costs of child care for program participants, including providing meals and snacks, and comprehensive and coordinated sets of appropriate developmental activities, are eligible. The children must be under the age of 13, unless they are disabled. Disabled children must be under the age of 18. The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

(iii) *Education services.* When necessary for the program participant to obtain and maintain housing, the costs of improving knowledge and basic educational skills are eligible. Services include instruction or training in consumer education, health education, substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED). Component services or activities are screening, assessment and testing; individual or group instruction; tutoring; provision of books, supplies and instructional material; counseling; and referral to community resources.

(iv) *Employment assistance and job training.* The costs of employment assistance and job training programs are eligible, including classroom, online, and/or computer instruction; on-the-job instruction; and services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of providing reasonable stipends to program participants in employment assistance and job training programs is an eligible cost. Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates. Services that assist individuals in securing employment consist of employment screening, assessment, or testing; structured job skills and job-seeking skills; special training and tutoring, including literacy training and prevocational training; books and instructional material; counseling or job coaching; and referral to community resources.

(v) *Outpatient health services.* Eligible costs are for the direct outpatient treatment of medical conditions and are provided by licensed medical professionals. Emergency Solutions Grant (ESG) funds may be used only for these services to the extent that other appropriate health services are unavailable within the community. Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate medical treatment, preventive medical care, and health maintenance services, including emergency medical services; providing medication and follow-up services; and providing preventive and noncosmetic dental care.

(vi) *Legal services.*

(A) Eligible costs are the hourly fees for legal advice and representation by attorneys licensed and in good standing with the bar association of the State in which the services are provided, and by person(s) under the supervision of the licensed attorney, regarding matters that interfere with the program participant's ability to obtain and retain housing.

(B) Emergency Solutions Grant (ESG) funds may be used only for these services to the extent that other appropriate legal services are unavailable or inaccessible within the community.

(C) Eligible subject matters are child support, guardianship, paternity, emancipation, and legal separation, orders of protection and other civil remedies for victims of domestic violence, dating violence, sexual assault, and stalking, appeal of veterans and public benefit claim denials, and the resolution of outstanding criminal warrants.

(D) Component services or activities may include client intake, preparation of cases for trial, provision of legal advice, representation at hearings, and counseling.

(E) Fees based on the actual service performed (i.e., fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a legal services provider and performs the services itself, the eligible costs are the subrecipient's employees' salaries and other costs necessary to perform the services.

(F) Legal services for immigration and citizenship matters and issues relating to mortgages are ineligible costs. Retainer fee arrangements and contingency fee arrangements are ineligible costs.

(vii) *Life skills training.* The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, substance use, and homelessness are eligible costs. These services must be necessary to assist the program participant to function independently in the community. Component life skills training are budgeting resources, managing money, managing a household, resolving conflict, shopping for food and needed items, improving nutrition, using public transportation, and parenting.

(viii) *Mental health services.*

(A) Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions.

(B) ESG funds may only be used for these services to the extent that other appropriate mental health services are unavailable or inaccessible within the community.

(C) Mental health services are the application of therapeutic processes to personal, family, situational, or occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances. Problem areas may include family and marital relationships, parent-child problems, or symptom management.

(D) Eligible treatment consists of crisis interventions; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.

(ix) *Substance abuse treatment services.*

(A) Eligible substance abuse treatment services are designed to prevent, reduce, eliminate, or deter relapse of substance abuse or addictive behaviors and are provided by licensed or certified professionals.

(B) ESG funds may only be used for these services to the extent that other appropriate substance abuse treatment services are unavailable or inaccessible within the community.

(C) Eligible treatment consists of client intake and assessment, and outpatient treatment for up to 30 days. Group and individual counseling and drug testing are eligible costs. Inpatient detoxification and other inpatient drug or alcohol treatment are not eligible costs.

(x) *Transportation.* Eligible costs consist of the transportation costs of a program participant's travel to and from medical care, employment, child care, or other eligible essential services facilities. These costs include the following:

(A) The cost of a program participant's travel on public transportation;

(B) If service workers use their own vehicles, mileage allowance for service workers to visit program participants;

(C) The cost of purchasing or leasing a vehicle for the recipient or subrecipient in which staff transports program participants and/or staff serving program participants, and the cost of gas, insurance, taxes, and maintenance for the vehicle; and

(D) The travel costs of recipient or subrecipient staff to accompany or assist program participants to use public transportation.

(xi) *Services for special populations.* ESG funds may be used to provide services for homeless youth, victim services, and services for people living with HIV/AIDS, so long as the costs of providing these services are eligible under paragraphs (a)(1)(i) through (a)(1)(x) of this section. The term *victim services* means services that assist program participants who are victims of domestic violence, dating violence, sexual assault, or stalking, including services offered by rape crisis centers and domestic violence shelters, and other organizations with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(2) *Renovation.* Eligible costs include labor, materials, tools, and other costs for renovation (including major rehabilitation of an emergency shelter or conversion of a building into an emergency shelter). The emergency shelter must be owned by a government entity or private nonprofit organization.

(3) *Shelter operations.* Eligible costs are the costs of maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, and supplies necessary for the operation of the emergency shelter. Where no appropriate emergency shelter is available for a homeless family or individual, eligible costs may also include a hotel or motel voucher for that family or individual.

(4) *Assistance required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).* Eligible costs are the costs of providing URA assistance under §576.408, including relocation payments and other assistance to persons displaced by a project assisted with ESG funds. Persons that receive URA assistance are not considered "program participants" for the purposes of this part, and relocation payments and other URA assistance are not considered "rental assistance" or "housing relocation and stabilization services" for the purposes of this part.

(b) *Prohibition against involuntary family separation.* The age of a child under age 18 must not be used as a basis for denying any family's admission to an emergency shelter that uses Emergency Solutions Grant (ESG) funding or services and provides shelter to families with children under age 18.

(c) *Minimum period of use.*

(1) *Renovated buildings.* Each building renovated with ESG funds must be maintained as a shelter for homeless individuals and families for not less than a period of 3 or 10 years, depending on the type of renovation and the value of the building. The "value of the building" is the reasonable monetary value assigned to the building, such as the value assigned by an independent real estate appraiser. The minimum use period must begin on the date the building is first occupied by a homeless individual or family after the completed renovation. A minimum period of use of 10 years, required for major rehabilitation and conversion, must be enforced by a recorded deed or use restriction.

(i) *Major rehabilitation.* If the rehabilitation cost of an emergency shelter exceeds 75 percent of the value of the building before rehabilitation, the minimum period of use is 10 years.

(ii) *Conversion.* If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the minimum period of use is 10 years.

(iii) *Renovation other than major rehabilitation or conversion.* In all other cases where ESG funds are used for renovation, the minimum period of use is 3 years.

(2) *Essential services and shelter operations.* Where the recipient or subrecipient uses ESG funds solely for essential services or shelter operations, the recipient or subrecipient must provide services or shelter to homeless individuals and families at least for the period during which the ESG funds are provided. The recipient or subrecipient does not need to limit these services or shelter to a particular site or structure, so long as the site or structure serves the same type of persons originally served with the assistance (e.g., families with children, unaccompanied youth, disabled individuals, or victims of domestic violence) or serves homeless persons in the same area where the recipient or subrecipient originally provided the services or shelter.

(d) *Maintenance of effort.* The maintenance of effort requirements under §576.101(c), which apply to the use of ESG funds for essential services related to street outreach, also apply for the use of such funds for essential services related to emergency shelter.

§ 576.103 Homelessness prevention component.

ESG funds may be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance necessary to prevent an individual or family from moving into an emergency shelter or another place described in paragraph (1) of the "homeless" definition in §576.2. This assistance, referred to as homelessness prevention, may be provided to individuals and families who meet the criteria under the "at risk of homelessness" definition, or who meet the criteria in paragraph (2), (3), or (4) of the "homeless" definition in §576.2 and have an annual income below 30 percent of median family income for the area, as determined by HUD. The costs of homelessness prevention are only eligible to the extent that the assistance is necessary to

help the program participant regain stability in the program participant's current permanent housing or move into other permanent housing and achieve stability in that housing. Homelessness prevention must be provided in accordance with the housing relocation and stabilization services requirements in §576.105, the short-term and medium-term rental assistance requirements in §576.106, and the written standards and procedures established under §576.400.

§ 576.104 Rapid re-housing assistance component.

ESG funds may be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing. This assistance, referred to as rapid re-housing assistance, may be provided to program participants who meet the criteria under paragraph (1) of the "homeless" definition in §576.2 or who meet the criteria under paragraph (4) of the "homeless" definition and live in an emergency shelter or other place described in paragraph (1) of the "homeless" definition. The rapid re-housing assistance must be provided in accordance with the housing relocation and stabilization services requirements in §576.105, the short- and medium-term rental assistance requirements in §576.106, and the written standards and procedures established under §576.400.

§ 576.105 Housing relocation and stabilization services.

(a) *Financial assistance costs.* Subject to the general conditions under §576.103 and §576.104, ESG funds may be used to pay housing owners, utility companies, and other third parties for the following costs:

- (1) *Rental application fees.* ESG funds may pay for the rental housing application fee that is charged by the owner to all applicants.
- (2) *Security deposits.* ESG funds may pay for a security deposit that is equal to no more than 2 months' rent.
- (3) *Last month's rent.* If necessary to obtain housing for a program participant, the last month's rent may be paid from ESG funds to the owner of that housing at the time the owner is paid the security deposit and the first month's rent. This assistance must not exceed one month's rent and must be included in calculating the program participant's total rental assistance, which cannot exceed 24 months during any 3-year period.
- (4) *Utility deposits.* ESG funds may pay for a standard utility deposit required by the utility company for all customers for the utilities listed in paragraph (5) of this section.
- (5) *Utility payments.* ESG funds may pay for up to 24 months of utility payments per program participant, per service, including up to 6 months of utility payments in arrears, per service. A partial payment of a utility bill counts as one month. This assistance may only be provided if the program participant or a member of the same household has an account in his or her name with a utility company or proof of responsibility to make utility payments. Eligible utility services are gas, electric, water, and sewage. No program participant shall receive more than 24 months of utility assistance within any 3-year period.
- (6) *Moving costs.* ESG funds may pay for moving costs, such as truck rental or hiring a moving company. This assistance may include payment of temporary storage fees for up to 3 months, provided that the fees are accrued after the date the program participant begins receiving assistance under paragraph (b) of this section and before the program participant moves into permanent housing. Payment of temporary storage fees in arrears is not eligible.

(b) *Services costs.* Subject to the general restrictions under §576.103 and §576.104, ESG funds may be used to pay the costs of providing the following services:

- (1) *Housing search and placement.* Services or activities necessary to assist program participants in locating, obtaining, and retaining suitable permanent housing, include the following:
 - (i) Assessment of housing barriers, needs, and preferences;
 - (ii) Development of an action plan for locating housing;
 - (iii) Housing search;
 - (iv) Outreach to and negotiation with owners;
 - (v) Assistance with submitting rental applications and understanding leases;
 - (vi) Assessment of housing for compliance with Emergency Solutions Grant (ESG) requirements for habitability, lead-based paint, and rent reasonableness;

- (vii) Assistance with obtaining utilities and making moving arrangements; and
- (viii) Tenant counseling.

(2) *Housing stability case management.* ESG funds may be used to pay cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to facilitate housing stability for a program participant who resides in permanent housing or to assist a program participant in overcoming immediate barriers to obtaining housing. This assistance cannot exceed 30 days during the period the program participant is seeking permanent housing and cannot exceed 24 months during the period the program participant is living in permanent housing. Component services and activities consist of:

- (A) Using the centralized or coordinated assessment system as required under §576.400(d), to evaluate individuals and families applying for or receiving homelessness prevention or rapid re-housing assistance;
- (B) Conducting the initial evaluation required under §576.401(a), including verifying and documenting eligibility, for individuals and families applying for homelessness prevention or rapid re-housing assistance;
- (C) Counseling;
- (D) Developing, securing, and coordinating services and obtaining Federal, State, and local benefits;
- (E) Monitoring and evaluating program participant progress;
- (F) Providing information and referrals to other providers;
- (G) Developing an individualized housing and service plan, including planning a path to permanent housing stability; and
- (H) Conducting re-evaluations required under §576.401(b).

(3) *Mediation.* ESG funds may pay for mediation between the program participant and the owner or person(s) with whom the program participant is living, provided that the mediation is necessary to prevent the program participant from losing permanent housing in which the program participant currently resides.

(4) *Legal services.* ESG funds may pay for legal services, as set forth in §576.102(a)(1)(vi), except that the eligible subject matters also include landlord/tenant matters, and the services must be necessary to resolve a legal problem that prohibits the program participant from obtaining permanent housing or will likely result in the program participant losing the permanent housing in which the program participant currently resides.

(5) *Credit repair.* ESG funds may pay for credit counseling and other services necessary to assist program participants with critical skills related to household budgeting, managing money, accessing a free personal credit report, and resolving personal credit problems. This assistance does not include the payment or modification of a debt.

(c) *Maximum amounts and periods of assistance.* The recipient may set a maximum dollar amount that a program participant may receive for each type of financial assistance under paragraph (a) of this section. The recipient may also set a maximum period for which a program participant may receive any of the types of assistance or services under this section. However, except for housing stability case management, the total period for which any program participant may receive the services under paragraph (b) of this section must not exceed 24 months during any 3-year period. The limits on the assistance under this section apply to the total assistance an individual receives, either as an individual or as part of a family.

(d) *Use with other subsidies.* Financial assistance under paragraph (a) of this section cannot be provided to a program participant who is receiving the same type of assistance through other public sources or to a program participant who has been provided with replacement housing payments under the URA, during the period of time covered by the URA payments.

§ 576.106 Short-term and medium-term rental assistance.

(a) *General provisions.* Subject to the general conditions under §576.103 and §576.104, the recipient or subrecipient may provide a program participant with up to 24 months of rental assistance during any 3-year

period. This assistance may be short-term rental assistance, medium-term rental assistance, payment of rental arrears, or any combination of this assistance.

- (1) Short-term rental assistance is assistance for up to 3 months of rent.
- (2) Medium-term rental assistance is assistance for more than 3 months but not more than 24 months of rent.
- (3) Payment of rental arrears consists of a one-time payment for up to 6 months of rent in arrears, including any late fees on those arrears.
- (4) Rental assistance may be tenant-based or project-based, as set forth in paragraphs (h) and (i) of this section.

(b) *Discretion to set caps and conditions.* Subject to the requirements of this section, the recipient may set a maximum amount or percentage of rental assistance that a program participant may receive, a maximum number of months that a program participant may receive rental assistance, or a maximum number of times that a program participant may receive rental assistance. The recipient may also require program participants to share in the costs of rent.

(c) *Use with other subsidies.* Except for a one-time payment of rental arrears on the tenant's portion of the rental payment, rental assistance cannot be provided to a program participant who is receiving tenant-based rental assistance, or living in a housing unit receiving project-based rental assistance or operating assistance, through other public sources. Rental assistance may not be provided to a program participant who has been provided with replacement housing payments under the URA during the period of time covered by the URA payments.

(d) *Rent restrictions.*

- (1) Rental assistance cannot be provided unless the rent does not exceed the Fair Market Rent established by HUD, as provided under 24 CFR part 888, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.
- (2) For purposes of calculating rent under this section, the rent shall equal the sum of the total monthly rent for the unit, any fees required for occupancy under the lease (other than late fees and pet fees) and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.

(e) *Rental assistance agreement.* The recipient or subrecipient may make rental assistance payments only to an owner with whom the recipient or subrecipient has entered into a rental assistance agreement. The rental assistance agreement must set forth the terms under which rental assistance will be provided, including the requirements that apply under this section. The rental assistance agreement must provide that, during the term of the agreement, the owner must give the recipient or subrecipient a copy of any notice to the program participant to vacate the housing unit, or any complaint used under state or local law to commence an eviction action against the program participant.

(f) *Late payments.* The recipient or subrecipient must make timely payments to each owner in accordance with the rental assistance agreement. The rental assistance agreement must contain the same payment due date, grace period, and late payment penalty requirements as the program participant's lease. The recipient or subrecipient is solely responsible for paying late payment penalties that it incurs with non-ESG funds.

(g) *Lease.* Each program participant receiving rental assistance must have a legally binding, written lease for the rental unit, unless the assistance is solely for rental arrears. The lease must be between the owner and the program participant. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance under paragraph (i) of this section, the lease must have an initial term of one year.

(h) *Tenant-based rental assistance.*

- (1) A program participant who receives tenant-based rental assistance may select a housing unit in which to live and may move to another unit or building and continue to receive rental assistance, as long as the program participant continues to meet the program requirements.

(2) The recipient may require that all program participants live within a particular area for the period in which the rental assistance is provided.

(3) The rental assistance agreement with the owner must terminate and no further rental assistance payments under that agreement may be made if:

- (i) The program participant moves out of the housing unit for which the program participant has a lease;
- (ii) The lease terminates and is not renewed; or
- (iii) The program participant becomes ineligible to receive ESG rental assistance.

(i) *Project-based rental assistance.* If the recipient or subrecipient identifies a permanent housing unit that meets ESG requirements and becomes available before a program participant is identified to lease the unit, the recipient or subrecipient may enter into a rental assistance agreement with the owner to reserve the unit and subsidize its rent in accordance with the following requirements:

(1) The rental assistance agreement may cover one or more permanent housing units in the same building. Each unit covered by the rental assistance agreement ("assisted unit") may only be occupied by program participants, except as provided under paragraph (i)(4) of this section.

(2) The recipient or subrecipient may pay up to 100 percent of the first month's rent, provided that a program participant signs a lease and moves into the unit before the end of the month for which the first month's rent is paid. The rent paid before a program participant moves into the unit must not exceed the rent to be charged under the program participant's lease and must be included when determining that program participant's total rental assistance.

(3) The recipient or subrecipient may make monthly rental assistance payments only for each whole or partial month an assisted unit is leased to a program participant. When a program participant moves out of an assisted unit, the recipient or subrecipient may pay the next month's rent, *i.e.*, the first month's rent for a new program participant, as provided in paragraph (i)(2) of this section.

(4) The program participant's lease must not condition the term of occupancy to the provision of rental assistance payments. If the program participant is determined ineligible or reaches the maximum number of months over which rental assistance can be provided, the recipient or subrecipient must suspend or terminate the rental assistance payments for the unit. If the payments are suspended, the individual or family may remain in the assisted unit as permitted under the lease, and the recipient or subrecipient may resume payments if the individual or family again becomes eligible and needs further rental assistance. If the payments are terminated, the rental assistance may be transferred to another available unit in the same building, provided that the other unit meets all ESG requirements.

(5) The rental assistance agreement must have an initial term of one year. When a new program participant moves into an assisted unit, the term of the rental assistance agreement may be extended to cover the initial term of the program participant's lease. If the program participant's lease is renewed, the rental assistance agreement may be renewed or extended, as needed, up to the maximum number of months for which the program participant remains eligible. However, under no circumstances may the recipient or subrecipient commit ESG funds to be expended beyond the expenditure deadline in §576.203 or commit funds for a future ESG grant before the grant is awarded.

(j) *Changes in household composition.* The limits on the assistance under this section apply to the total assistance an individual receives, either as an individual or as part of a family.

§ 576.107 HMIS component.

(a) *Eligible costs.*

(1) The recipient or subrecipient may use ESG funds to pay the costs of contributing data to the HMIS designated by the Continuum of Care for the area, including the costs of:

- (i) Purchasing or leasing computer hardware;
- (ii) Purchasing software or software licenses;
- (iii) Purchasing or leasing equipment, including telephones, fax machines, and furniture;
- (iv) Obtaining technical support;
- (v) Leasing office space;
- (vi) Paying charges for electricity, gas, water, phone service, and high-speed data transmission necessary to operate or contribute data to the HMIS;

(vii) Paying salaries for operating HMIS, including:

- (A) Completing data entry;
- (B) Monitoring and reviewing data quality;
- (C) Completing data analysis;
- (D) Reporting to the HMIS Lead;
- (F) Training staff on using the HMIS or comparable database; and
- (G) Implementing and complying with HMIS requirements;

(viii) Paying costs of staff to travel to and attend HUD-sponsored and HUD-approved training on HMIS and programs authorized by Title IV of the McKinney-Vento Homeless Assistance Act;

(ix) Paying staff travel costs to conduct intake; and

(x) Paying participation fees charged by the HMIS Lead, if the recipient or subrecipient is not the HMIS Lead. The HMIS Lead is the entity designated by the Continuum of Care to operate the area's HMIS.

(2) If the recipient is the HMIS lead agency, as designated by the Continuum of Care in the most recent fiscal year Continuum of Care Homeless Assistance Grants Competition, it may also use ESG funds to pay the costs of:

- (i) Hosting and maintaining HMIS software or data;
- (ii) Backing up, recovering, or repairing HMIS software or data;
- (iii) Upgrading, customizing, and enhancing the HMIS;
- (iv) Integrating and warehousing data, including development of a data warehouse for use in aggregating data from subrecipients using multiple software systems;
- (v) Administering the system;
- (vi) Reporting to providers, the Continuum of Care, and HUD; and
- (vii) Conducting training on using the system or a comparable database, including traveling to the training.

(3) If the subrecipient is a victim services provider or a legal services provider, it may use ESG funds to establish and operate a comparable database that collects client-level data over time (*i.e.*, longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS.

(b) *General restrictions.* Activities funded under this section must comply with HUD's standards on participation, data collection, and reporting under a local HMIS.

§ 576.108 Administrative activities.

(a) *Eligible costs.* The recipient may use up to 7.5 percent of its ESG grant for the payment of administrative costs related to the planning and execution of ESG activities. This does not include staff and overhead costs directly related to carrying out activities eligible under §576.101 through §576.107, because those costs are eligible as part of those activities. Eligible administrative costs include:

(1) *General management, oversight and coordination.* Costs of overall program management, coordination, monitoring, and evaluation. These costs include, but are not limited to, necessary expenditures for the following:

(i) Salaries, wages, and related costs of the recipient's staff, the staff of subrecipients, or other staff engaged in program administration. In charging costs to this category, the recipient may either include the entire salary, wages, and related costs allocable to the program of each person whose *primary* responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The recipient may use only one of these methods for each fiscal year grant. Program administration assignments include the following:

- (A) Preparing program budgets and schedules, and amendments to those budgets and schedules;
- (B) Developing systems for assuring compliance with program requirements;

- (C) Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;
- (D) Monitoring program activities for progress and compliance with program requirements;
- (E) Preparing reports and other documents directly related to the program for submission to HUD;
- (F) Coordinating the resolution of audit and monitoring findings;
- (G) Evaluating program results against stated objectives; and
- (H) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i)(A) through (G) of this section.

- (ii) Travel costs incurred for monitoring of subrecipients;
- (iii) Administrative services performed under third-party contracts or agreements, including general legal services, accounting services, and audit services; and
- (iv) Other costs for goods and services required for administration of the program, including rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

(2) *Training on ESG requirements.* Costs of providing training on ESG requirements and attending HUD-sponsored ESG trainings.

(3) *Consolidated plan.* Costs of preparing and amending the ESG and homelessness-related sections of the consolidated plan in accordance with ESG requirements and 24 CFR part 91.

(4) *Environmental review.* Costs of carrying out the environmental review responsibilities under §576.407.

(b) Sharing requirement.

(1) *States.* If the recipient is a State, the recipient must share its funds for administrative costs with its subrecipients that are units of general purpose local government. The amount shared must be reasonable under the circumstances. The recipient may share its funds for administrative costs with its subrecipients that are private nonprofit organizations.

(2) *Territories, metropolitan cities, and urban counties.* If the recipient is a territory, metropolitan city, or urban county, the recipient may share its funds for administrative costs with its subrecipients.

§ 576.109 Indirect costs.

(a) *In general.* ESG grant funds may be used to pay indirect costs in accordance with OMB Circular A-87 (2 CFR part 225), or A-122 (2 CFR part 230), as applicable.

(b) *Allocation.* Indirect costs may be allocated to each eligible activity under §576.101 through §576.108, so long as that allocation is consistent with an indirect cost rate proposal developed in accordance with OMB Circular A-87 (2 CFR part 225), or A-122 (2 CFR part 230), as applicable.

(c) *Expenditure limits.* The indirect costs charged to an activity subject to an expenditure limit under §576.100 must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limit.

Subpart C—Award and Use of Funds

§ 576.200 Submission requirements and grant approval.

(a) *Application submission and approval.* In addition to meeting the application submission requirements in 24 CFR part 5, subpart K, each State, urban county, or metropolitan city must submit and obtain HUD approval of a consolidated plan in accordance with the requirements in 24 CFR part 91, and each territory must submit and obtain HUD approval of a consolidated plan in accordance with the requirements that apply to local governments under 24 CFR part 91. As provided under 24 CFR 85.12, HUD may impose special conditions or restrictions on a grant, if the recipient is determined to be high risk.

(b) *Amendments.* The recipient must amend its approved consolidated plan in order to make a change in its allocation priorities; make a change in its method of distributing funds; carry out an activity not previously described in the plan; or change the purpose, scope, location, or beneficiaries of an activity. The amendment must be completed and submitted to HUD in accordance with the requirements under 24 CFR 91.505.

§ 576.201 Matching requirement.

(a) Required amount of matching contributions.

- (1) Except as provided under paragraphs (a)(2) and (a)(3) of this section, the recipient must make matching contributions to supplement the recipient's ESG program in an amount that equals the amount of ESG funds provided by HUD.
- (2) If the recipient is a State, the first \$100,000 of the fiscal year grant is not required to be matched. However, the recipient must transfer the benefit of this exception to its subrecipients that are least capable of providing the recipient with matching contributions.
- (3) This matching requirement does not apply if the recipient is a territory.

(b) Eligible sources of matching contributions.

- (1) Subject to the requirement for States under paragraph (a)(2) of this section, the recipient may require its subrecipients to make matching contributions consistent with this section to help meet the recipient's matching requirement.
- (2) Matching contributions may be obtained from any source, including any Federal source other than the ESG program, as well as state, local, and private sources. However, the following requirements apply to matching contributions from a Federal source of funds:
 - (i) The recipient must ensure the laws governing any funds to be used as matching contributions do not prohibit those funds from being used to match Emergency Solutions Grant (ESG) funds.
 - (ii) If ESG funds are used to satisfy the matching requirements of another Federal program, then funding from that program may not be used to satisfy the matching requirements under this section.

(c) Recognition of matching contributions.

- (1) In order to meet the matching requirement, the matching contributions must meet all requirements that apply to the ESG funds provided by HUD, except for the expenditure limits in §576.100.
- (2) The matching contributions must be provided after the date that HUD signs the grant agreement.
- (3) To count toward the required match for the recipient's fiscal year grant, cash contributions must be expended within the expenditure deadline in §576.203, and noncash contributions must be made within the expenditure deadline in §576.203.
- (4) Contributions used to match a previous ESG grant may not be used to match a subsequent ESG grant.
- (5) Contributions that have been or will be counted as satisfying a matching requirement of another Federal grant or award may not count as satisfying the matching requirement of this section.

(d) Eligible types of matching contributions. The matching requirement may be met by one or both of the following:

- (1) *Cash contributions.* Cash expended for allowable costs, as defined in OMB Circulars A-87 (2 CFR part 225) and A-122 (2 CFR part 230), of the recipient or subrecipient.
- (2) *Noncash contributions.* The value of any real property, equipment, goods, or services contributed to the recipient's or subrecipient's ESG program, provided that if the recipient or subrecipient had to pay for them with grant funds, the costs would have been allowable. Noncash contributions may also include the purchase value of any donated building.

(e) Calculating the amount of noncash contributions.

- (1) To determine the value of any donated material or building, or of any lease, the recipient must use a method reasonably calculated to establish the fair market value.
- (2) Services provided by individuals must be valued at rates consistent with those ordinarily paid for similar work in the recipient's or subrecipient's organization. If the recipient or subrecipient does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market.
- (3) Some noncash contributions are real property, equipment, goods, or services that, if the recipient or subrecipient had to pay for them with grant funds, the payments would have been indirect costs.

Matching credit for these contributions must be given only if the recipient or subrecipient has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of those contributions.

(f) *Costs paid by program income.* Costs paid by program income shall count toward meeting the recipient's matching requirements, provided the costs are eligible ESG costs that supplement the recipient's ESG program.

§ 576.202 Means of carrying out grant activities.

(a) *States.* If the recipient is a State, the recipient may use an amount consistent with the restrictions in §576.100 and §576.108 to carry out administrative activities through its employees or procurement contracts. If the recipient is a State, and has been identified as the HMIS lead by the Continuum of Care, the State may use funds to carry out HMIS activities set forth in §576.107(a)(2). The recipient must subgrant the remaining funds in its fiscal year grant to:

- (1) Units of general purpose local government in the State, which may include metropolitan cities and urban counties that receive ESG funds directly from HUD; or
- (2) Private nonprofit organizations, provided that for emergency shelter activities the recipient obtains a certification of approval from the unit of general purpose local government for the geographic area in which those activities are to be carried out.

(b) *Recipients other than States; subrecipients.* The recipient, if it is not a State, and all subrecipients may carry out all eligible activities through their employees, procurement contracts, or subgrants to private nonprofit organizations. If the recipient is an urban county, it may carry out activities through any of its member governments, so long as the county applies to its members the same requirements that are applicable to local government subrecipients under this part.

§ 576.203 Obligation, expenditure, and payment requirements.

(a) *Obligation of funds.*

(1) *Funds allocated to States.*

- (i) Within 60 days from the date that HUD signs the grant agreement with the State (or grant amendment for reallocated funds), the recipient must obligate the entire grant, except the amount for its administrative costs. This requirement is met by a subgrant agreement with, or a letter of award requiring payment from the grant to, a subrecipient.
- (ii) Within 120 days after the date that the State obligates its funds to a unit of general purpose local government, the subrecipient must obligate all of those funds by a subgrant agreement with, or a letter of award requiring payment to, a private nonprofit organization; a procurement contract; or the written designation of a department within the government of the subrecipient to directly carry out an eligible activity.

(2) *Funds allocated to metropolitan cities, urban counties, and territories.* Within 180 days after the date that HUD signs the grant agreement (or a grant amendment for reallocation of funds) with the metropolitan city, urban county, or territory, the recipient must obligate all the grant amount, except the amount for its administrative costs. This requirement is met by an agreement with, or a letter of award requiring payment to, a subrecipient; a procurement contract; or a written designation of a department within the government of the recipient to directly carry out an eligible activity. If the recipient is an urban county, this requirement may also be met with an agreement with, or letter of award requiring payment to, a member government, which has designated a department to directly carry out an eligible activity.

(b) *Expenditures.* The recipient must draw down and expend funds from each year's grant not less than once during each quarter of the recipient's program year. All of the recipient's grant must be expended for eligible activity costs within 24 months after the date HUD signs the grant agreement with the recipient. For the purposes of this paragraph, expenditure means either an actual cash disbursement for a direct charge for a good or service or an indirect cost or the accrual of a direct charge for a good or service or an indirect cost.

(c) *Payments to subrecipients.* The recipient must pay each subrecipient for allowable costs within 30 days after receiving the subrecipient's complete payment request. This requirement also applies to each subrecipient that is a unit of general purpose local government.

Subpart D—Reallocations

§ 576.300 In general.

- (1) Funds not awarded by HUD due to failure by the recipient to submit and obtain HUD approval of a consolidated plan will be reallocated in accordance with §§576.301 through 576.303.
- (2) Recaptured funds will be awarded by formula. In October and April each year, HUD will determine if the amount of recaptured funds is at least 30 percent of the most recent fiscal year appropriation. If so, HUD will amend all existing grants and reallocate the funds. If the amount is less than 30 percent of the most recent fiscal year appropriation, the funds will be reallocated in conjunction with the next fiscal year's allocation of funding.

§ 576.301 Metropolitan cities and urban counties.

Grant funds returned by a metropolitan city or urban county will be reallocated as follows:

- (a) *Eligible recipient.* HUD will make the funds available to the State in which the city or county is located.
- (b) *Notification of availability.* HUD will promptly notify the State of the availability of the amounts to be reallocated.
- (c) *Application requirement.* Within 45 days after the date of notification, the State must submit to HUD a substantial amendment to its consolidated plan in accordance with 24 CFR part 91.
- (d) *Restrictions that apply to reallocated amounts.* The same requirements that apply to grant funds allocated under §576.3 apply to grant funds reallocated under this section, except that the State must distribute the reallocated funds:
 - (1) To private nonprofit organizations and units of general purpose local government in the geographic area in which the metropolitan city or urban county is located;
 - (2) If funds remain, to private nonprofit organizations and units of general purpose local government located throughout the State.

§ 576.302 States.

Grant funds returned by a State will be reallocated as follows:

- (a) *Eligible recipients.* HUD will make the funds available:
 - (1) To metropolitan cities and urban counties in the State that were not allocated funds under §576.3 because the amount they would have been allocated did not meet the minimum requirement under §576.3(b)(2);
 - (2) If funds remain, to county governments in the State other than urban counties;
 - (3) Then, if funds remain, to metropolitan cities and urban counties in the State that were allocated funds under §576.3.
- (b) *Notification of availability.* HUD will notify eligible recipients of the availability of the funds by a notification letter or Federal Register notice, which will specify how the awards of funds will be made.
- (c) *Application requirements.* Within 45 days after the date of notification, the eligible recipient must submit to HUD:
 - (1) A substantial amendment to its approved consolidated plan in accordance with 24 CFR part 91; or
 - (2) If the eligible recipient does not have an approved consolidated plan, an abbreviated consolidated plan that meets the requirements in the Federal Register notice or notification letter from HUD.
- (d) *Restrictions that apply to reallocated amounts.* The same requirements that apply to grant funds allocated under §576.3 apply to grant funds reallocated under this section.

§ 576.303 Territories.

(a) *General.* Grant funds returned by a territory will be reallocated to other territories, then if funds remain, to States.

(b) *Allocation method.* The funds will be allocated as follows:

(1) For territories, the funds will be allocated among the territories in direct proportion with each territory's share of the total population of all of the eligible territories. If HUD determines that a territory failed to spend its funds in accordance with ESG requirements, then HUD may exclude the territory from the allocation of reallocation amounts under this section.

(2) For States, the funds will be allocated to each State in direct proportion with each State's share of the total amount of funds allocated to States under §576.3.

(c) *Notification of availability.* HUD will notify eligible recipients of the availability of the fund by a letter or Federal Register notice, which will specify how the awards of funds will be made.

(d) *Application requirements.* Within 45 days after the date of notification, the eligible recipient must submit to HUD a substantial amendment to its consolidated plan in accordance with 24 CFR part 91.

(e) *Restrictions that apply to reallocated amounts.* The same requirements that apply to grant funds allocated under §576.3 apply to grant funds reallocated under this section.

Subpart E—Program Requirements

§ 576.400 Area-wide systems coordination requirements.

(a) *Consultation with Continuums of Care.* The recipient must consult with each Continuum of Care that serves the recipient's jurisdiction in determining how to allocate ESG funds each program year; developing the performance standards for, and evaluating the outcomes of, projects and activities assisted by ESG funds; and developing funding, policies, and procedures for the administration and operation of the HMIS.

(b) *Coordination with other targeted homeless services.* The recipient and its subrecipients must coordinate and integrate, to the maximum extent practicable, ESG-funded activities with other programs targeted to homeless people in the area covered by the Continuum of Care or area over which the services are coordinated to provide a strategic, community-wide system to prevent and end homelessness for that area. These programs include:

- (1) Shelter Plus Care Program (24 CFR part 582);
- (2) Supportive Housing Program (24 CFR part 583);
- (3) Section 8 Moderate Rehabilitation Program for Single Room Occupancy Program for Homeless Individuals (24 CFR part 882);
- (4) HUD—Veterans Affairs Supportive Housing (HUD—VASH) (division K, title II, Consolidated Appropriations Act, 2008, Pub. L. 110–161 (2007), 73 FR 25026 (May 6, 2008));
- (5) Education for Homeless Children and Youth Grants for State and Local Activities (title VII–B of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.));
- (6) Grants for the Benefit of Homeless Individuals (section 506 of the Public Health Services Act (42 U.S.C. 290aa–5));
- (7) Healthcare for the Homeless (42 CFR part 51c);
- (8) Programs for Runaway and Homeless Youth (Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.));
- (9) Projects for Assistance in Transition from Homelessness (part C of title V of the Public Health Service Act (42 U.S.C. 290cc–21 et seq.));
- (10) Services in Supportive Housing Grants (section 520A of the Public Health Service Act);
- (11) Emergency Food and Shelter Program (title III of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11331 et seq.));
- (12) Transitional Housing Assistance Grants for Victims of Sexual Assault, Domestic Violence, Dating Violence, and Stalking Program (section 40299 of the Violent Crime Control and Law Enforcement Act (42 U.S.C. 13975));
- (13) Homeless Veterans Reintegration Program (section 5(a)(1)) of the Homeless Veterans Comprehensive Assistance Act (38 U.S.C. 2021);
- (14) Domiciliary Care for Homeless Veterans Program (38 U.S.C. 2043);
- (15) VA Homeless Providers Grant and Per Diem Program (38 CFR part 61);

- (16) Health Care for Homeless Veterans Program (38 U.S.C. 2031);
- (17) Homeless Veterans Dental Program (38 U.S.C. 2062);
- (18) Supportive Services for Veteran Families Program (38 CFR part 62); and
- (19) Veteran Justice Outreach Initiative (38 U.S.C. 2031).

(c) *System and program coordination with mainstream resources.* The recipient and its subrecipients must coordinate and integrate, to the maximum extent practicable, ESG-funded activities with mainstream housing, health, social services, employment, education, and youth programs for which families and individuals at risk of homelessness and homeless individuals and families may be eligible. Examples of these programs include:

- (1) Public housing programs assisted under section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g) (24 CFR parts 905, 968, and 990);
- (2) Housing programs receiving tenant-based or project-based assistance under section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f) (respectively 24 CFR parts 982 and 983);
- (3) Supportive Housing for Persons with Disabilities (Section 811) (24 CFR part 891);
- (4) HOME Investment Partnerships Program (24 CFR part 92);
- (5) Temporary Assistance for Needy Families (TANF) (45 CFR parts 260–265);
- (6) Health Center Program (42 CFR part 51c);
- (7) State Children's Health Insurance Program (42 CFR part 457);
- (8) Head Start (45 CFR chapter XIII, subchapter B);
- (9) Mental Health and Substance Abuse Block Grants (45 CFR part 96); and
- (10) Services funded under the Workforce Investment Act (29 U.S.C. 2801 et seq.).

(d) *Centralized or coordinated assessment.* Once the Continuum of Care has developed a centralized assessment system or a coordinated assessment system in accordance with requirements to be established by HUD, each ESG-funded program or project within the Continuum of Care's area must use that assessment system. The recipient and subrecipient must work with the Continuum of Care to ensure the screening, assessment and referral of program participants are consistent with the written standards required by paragraph (e) of this section. A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system.

(e) *Written standards for providing ESG assistance.*

- (1) If the recipient is a metropolitan city, urban county, or territory, the recipient must have written standards for providing Emergency Solutions Grant (ESG) assistance and must consistently apply those standards for all program participants. The recipient must describe these standards in its consolidated plan.
- (2) If the recipient is a state:
 - (i) The recipient must establish and consistently apply, or require that its subrecipients establish and consistently apply, written standards for providing ESG assistance. If the written standards are established by the subrecipients, the recipient may require these written standards to be:
 - (A) Established for each area covered by a Continuum of Care or area over which the services are coordinated and followed by each subrecipient providing assistance in that area; or
 - (B) Established by each subrecipient and applied consistently within the subrecipient's program.
 - (ii) Written standards developed by the state must be included in the state's Consolidated Plan. If the written standards are developed by its subrecipients, the recipient must describe its requirements for the establishment and implementation of these standards in the state's Consolidated Plan.
- (3) At a minimum these written standards must include:
 - (i) Standard policies and procedures for evaluating individuals' and families' eligibility for assistance under Emergency Solutions Grant (ESG);
 - (ii) Standards for targeting and providing essential services related to street outreach;
 - (iii) Policies and procedures for admission, diversion, referral, and discharge by emergency shelters assisted under ESG, including standards regarding length of stay, if any, and

safeguards to meet the safety and shelter needs of special populations, e.g., victims of domestic violence, dating violence, sexual assault, and stalking; and individuals and families who have the highest barriers to housing and are likely to be homeless the longest;

(iv) Policies and procedures for assessing, prioritizing, and reassessing individuals' and families' needs for essential services related to emergency shelter;

(v) Policies and procedures for coordination among emergency shelter providers, essential services providers, homelessness prevention, and rapid re-housing assistance providers; other homeless assistance providers; and mainstream service and housing providers (see §576.400(b) and (c) for a list of programs with which ESG-funded activities must be coordinated and integrated to the maximum extent practicable);

(vi) Policies and procedures for determining and prioritizing which eligible families and individuals will receive homelessness prevention assistance and which eligible families and individuals will receive rapid re-housing assistance;

(vii) Standards for determining what percentage or amount of rent and utilities costs each program participant must pay while receiving homelessness prevention or rapid re-housing assistance;

(viii) Standards for determining how long a particular program participant will be provided with rental assistance and whether and how the amount of that assistance will be adjusted over time; and

(ix) Standards for determining the type, amount, and duration of housing stabilization and/or relocation services to provide to a program participant, including the limits, if any, on the homelessness prevention or rapid re-housing assistance that each program participant may receive, such as the maximum amount of assistance, maximum number of months the program participant receive assistance; or the maximum number of times the program participant may receive assistance.

(f) *Participation in HMIS.* The recipient must ensure that data on all persons served and all activities assisted under ESG are entered into the applicable community-wide HMIS in the area in which those persons and activities are located, or a comparable database, in accordance with HUD's standards on participation, data collection, and reporting under a local HMIS. If the subrecipient is a victim service provider or a legal services provider, it may use a comparable database that collects client-level data over time (i.e., longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS.

§ 576.401 Evaluation of program participant eligibility and needs.

(a) *Evaluations.* The recipient or its subrecipient must conduct an initial evaluation to determine the eligibility of each individual or family's eligibility for ESG assistance and the amount and types of assistance the individual or family needs to regain stability in permanent housing. These evaluations must be conducted in accordance with the centralized or coordinated assessment requirements set forth under §576.400(d) and the written standards established under §576.400(e).

(b) *Re-evaluations for homelessness prevention and rapid re-housing assistance.*

(1) The recipient or subrecipient must re-evaluate the program participant's eligibility and the types and amounts of assistance the program participant needs not less than once every 3 months for program participants receiving homelessness prevention assistance, and not less than once annually for program participants receiving rapid re-housing assistance. At a minimum, each re-evaluation of eligibility must establish that:

(i) The program participant does not have an annual income that exceeds 30 percent of median family income for the area, as determined by HUD; and

(ii) The program participant lacks sufficient resources and support networks necessary to retain housing without ESG assistance.

(2) The recipient or subrecipient may require each program participant receiving homelessness prevention or rapid re-housing assistance to notify the recipient or subrecipient regarding changes in the program participant's income or other circumstances (e.g., changes in household composition) that affect the program participant's need for assistance under ESG. When notified of a relevant change, the

recipient or subrecipient must re-evaluate the program participant's eligibility and the amount and types of assistance the program participant needs.

(c) *Annual income.* When determining the annual income of an individual or family, the recipient or subrecipient must use the standard for calculating annual income under 24 CFR 5.609.

(d) *Connecting program participants to mainstream and other resources.* The recipient and its subrecipients must assist each program participant, as needed, to obtain:

(1) Appropriate supportive services, including assistance in obtaining permanent housing, medical health treatment, mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(2) Other Federal, State, local, and private assistance available to assist the program participant in obtaining housing stability, including:

(i) Medicaid (42 CFR chapter IV, subchapter C);

(ii) Supplemental Nutrition Assistance Program (7 CFR parts 271–283);

(iii) Women, Infants and Children (WIC) (7 CFR part 246);

(iv) Federal-State Unemployment Insurance Program (20 CFR parts 601–603, 606, 609, 614–617, 625, 640, 650);

(v) Social Security Disability Insurance (SSDI) (20 CFR part 404);

(vi) Supplemental Security Income (SSI) (20 CFR part 416);

(vii) Child and Adult Care Food Program (42 U.S.C. 1766(t) (7 CFR part 226));

(viii) Other assistance available under the programs listed in §576.400(c).

(e) *Housing stability case management.*

(1) While providing homelessness prevention or rapid re-housing assistance to a program participant, the recipient or subrecipient must:

(i) Require the program participant to meet with a case manager not less than once per month to assist the program participant in ensuring long-term housing stability; and

(ii) Develop a plan to assist the program participant to retain permanent housing after the ESG assistance ends, taking into account all relevant considerations, such as the program participant's current or expected income and expenses; other public or private assistance for which the program participant will be eligible and likely to receive; and the relative affordability of available housing in the area.

(2) The recipient or subrecipient is exempt from the requirement under paragraph (e)(1)(i) of this section if the Violence Against Women Act of 1994 (42 U.S.C. 13701 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits that recipient or subrecipient from making its shelter or housing conditional on the participant's acceptance of services.

§ 576.402 Terminating assistance.

(a) *In general.* If a program participant violates program requirements, the recipient or subrecipient may terminate the assistance in accordance with a formal process established by the recipient or subrecipient that recognizes the rights of individuals affected. The recipient or subrecipient must exercise judgment and examine all extenuating circumstances in determining when violations warrant termination so that a program participant's assistance is terminated only in the most severe cases.

(b) *Program participants receiving rental assistance or housing relocation and stabilization services.* To terminate rental assistance or housing relocation and stabilization services to a program participant, the required formal process, at a minimum, must consist of:

(1) Written notice to the program participant containing a clear statement of the reasons for termination;

(2) A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(3) Prompt written notice of the final decision to the program participant.

(c) *Ability to provide further assistance.* Termination under this section does not bar the recipient or subrecipient from providing further assistance at a later date to the same family or individual.

§ 576.403 Shelter and housing standards.

(a) *Lead-based paint remediation and disclosure.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations in 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to all shelters assisted under ESG program and all housing occupied by program participants.

(b) *Minimum standards for emergency shelters.* Any building for which Emergency Solutions Grant (ESG) funds are used for conversion, major rehabilitation, or other renovation, must meet state or local government safety and sanitation standards, as applicable, and the following minimum safety, sanitation, and privacy standards. Any emergency shelter that receives assistance for shelter operations must also meet the following minimum safety, sanitation, and privacy standards. The recipient may also establish standards that exceed or add to these minimum standards.

(1) *Structure and materials.* The shelter building must be structurally sound to protect residents from the elements and not pose any threat to health and safety of the residents. Any renovation (including major rehabilitation and conversion) carried out with ESG assistance must use Energy Star and WaterSense products and appliances.

(2) *Access.* The shelter must be accessible in accordance with Section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3601 *et seq.*) and implementing regulations at 24 CFR part 100; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131 *et seq.*) and 28 CFR part 35; where applicable.

(3) *Space and security.* Except where the shelter is intended for day use only, the shelter must provide each program participant in the shelter with an acceptable place to sleep and adequate space and security for themselves and their belongings.

(4) *Interior air quality.* Each room or space within the shelter must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(5) *Water supply.* The shelter's water supply must be free of contamination.

(6) *Sanitary facilities.* Each program participant in the shelter must have access to sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.

(7) *Thermal environment.* The shelter must have any necessary heating/cooling facilities in proper operating condition.

(8) *Illumination and electricity.* The shelter must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the shelter.

(9) *Food preparation.* Food preparation areas, if any, must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(10) *Sanitary conditions.* The shelter must be maintained in a sanitary condition.

(11) *Fire safety.* There must be at least one working smoke detector in each occupied unit of the shelter. Where possible, smoke detectors must be located near sleeping areas. The fire alarm system must be designed for hearing-impaired residents. All public areas of the shelter must have at least one working smoke detector. There must also be a second means of exiting the building in the event of fire or other emergency.

(c) *Minimum standards for permanent housing.* The recipient or subrecipient cannot use ESG funds to help a program participant remain or move into housing that does not meet the minimum habitability standards provided in this paragraph (c). The recipient may also establish standards that exceed or add to these minimum standards.

(1) *Structure and materials.* The structures must be structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.

(2) *Space and security.* Each resident must be provided adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.

(3) *Interior air quality.* Each room or space must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

- (4) *Water supply.* The water supply must be free from contamination.
- (5) *Sanitary facilities.* Residents must have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.
- (6) *Thermal environment.* The housing must have any necessary heating/cooling facilities in proper operating condition.
- (7) *Illumination and electricity.* The structure must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the structure.
- (8) *Food preparation.* All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.
- (9) *Sanitary conditions.* The housing must be maintained in a sanitary condition.
- (10) *Fire safety.*
 - (i) There must be a second means of exiting the building in the event of fire or other emergency.
 - (ii) Each unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.
 - (iii) The public areas of all housing must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

§ 576.404 Conflicts of interest.

(a) *Organizational conflicts of interest.* The provision of any type or amount of ESG assistance may not be conditioned on an individual's or family's acceptance or occupancy of emergency shelter or housing owned by the recipient, the subrecipient, or a parent or subsidiary of the subrecipient. No subrecipient may, with respect to individuals or families occupying housing owned by the subrecipient, or any parent or subsidiary of the subrecipient, carry out the initial evaluation required under §576.401 or administer homelessness prevention assistance under §576.103.

(b) *Individual conflicts of interest.* For the procurement of goods and services, the recipient and its subrecipients must comply with the codes of conduct and conflict of interest requirements under 24 CFR 85.36 (for governments) and 24 CFR 84.42 (for private nonprofit organizations). For all other transactions and activities, the following restrictions apply:

- (1) *Conflicts prohibited.* No person described in paragraph (b)(2) of this section who exercises or has exercised any functions or responsibilities with respect to activities assisted under the ESG program, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under the program, may obtain a financial interest or benefit from an assisted activity; have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity; or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or during the one-year period following his or her tenure.
- (2) *Persons covered.* The conflict-of-interest provisions of paragraph (b)(1) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients.
- (3) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of this subsection on a case-by-case basis, taking into account the cumulative effects of the criteria in paragraph (b)(3)(ii) of this section, provided that the recipient has satisfactorily met the threshold requirements of paragraph (b)(3)(i) of this section.

(i) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

- (A) If the recipient or subrecipient is a government, disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(B) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate state or local law.

(ii) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements under paragraph (b)(3)(i) of this section, HUD must conclude that the exception will serve to further the purposes of the ESG program and the effective and efficient administration of the recipient's or subrecipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

- (A) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;
- (B) Whether an opportunity was provided for open competitive bidding or negotiation;
- (C) Whether the affected person has withdrawn from his or her functions, responsibilities or the decision-making process with respect to the specific activity in question;
- (D) Whether the interest or benefit was present before the affected person was in the position described in paragraph (b)(1) of this section;
- (E) Whether undue hardship results to the recipient, the subrecipient, or the person affected, when weighed against the public interest served by avoiding the prohibited conflict; and
- (F) Any other relevant considerations.

(c) *Contractors.* All contractors of the recipient or subrecipient must comply with the same requirements that apply to subrecipients under this section.

§ 576.405 Homeless participation.

(a) Unless the recipient is a State, the recipient must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policy-making entity of the recipient, to the extent that the entity considers and makes policies and decisions regarding any facilities, services, or other assistance that receive funding under Emergency Solutions Grant (ESG).

(b) If the recipient is unable to meet requirement under paragraph (a), it must instead develop and implement a plan to consult with homeless or formerly homeless individuals in considering and making policies and decisions regarding any facilities, services, or other assistance that receive funding under Emergency Solutions Grant (ESG). The plan must be included in the annual action plan required under 24 CFR 91.220.

(c) To the maximum extent practicable, the recipient or subrecipient must involve homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under ESG, in providing services assisted under ESG, and in providing services for occupants of facilities assisted under ESG. This involvement may include employment or volunteer services.

§ 576.406 Faith-based activities.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to receive ESG funds. Neither the Federal Government nor a State or local government receiving funds under ESG shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the ESG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under ESG. If an organization conducts these activities, the activities must be offered separately, in time or location, from the programs or services funded under ESG, and participation must be voluntary for program participants.

(c) Any religious organization that receives ESG funds retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that the religious organization does not use direct ESG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide ESG-funded services, without removing religious art,

icons, scriptures, or other religious symbols. In addition, an ESG-funded religious organization retains its authority over its internal governance, and the organization may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) An organization that receives ESG funds shall not, in providing ESG assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

(e) ESG funds may not be used for the rehabilitation of structures to the extent that those structures are used for inherently religious activities. Solutions ESG funds may be used for the rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the ESG program. Where a structure is used for both eligible and inherently religious activities, ESG funds may not exceed the cost of those portions of the rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to ESG funds. Sanctuaries, chapels, or other rooms that an ESG-funded religious congregation uses as its principal place of worship, however, are ineligible for funded improvements under the program. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).

(f) If the recipient or a subrecipient that is a local government voluntarily contributes its own funds to supplement federally funded activities, the recipient or subrecipient has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

§ 576.407 Other Federal requirements.

(a) *General.* The requirements in 24 CFR part 5, subpart A are applicable, including the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a). Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR part 135 apply, except that homeless individuals have priority over other Section 3 residents in accordance with §576.405(c).

(b) *Affirmative outreach.* The recipient or subrecipient must make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. If it is unlikely that the procedures that the recipient or subrecipient intends to use to make known the availability of the facilities, assistance, and services will to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the recipient or subrecipient must establish additional procedures that ensure that those persons are made aware of the facilities, assistance, and services. The recipient and its subrecipients must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Consistent with Title VI and Executive Order 13166, recipients and subrecipients are also required to take reasonable steps to ensure meaningful access to programs and activities for limited English proficiency (LEP) persons.

(c) *Uniform Administrative Requirements.* The requirements of 24 CFR part 85 apply to the recipient and subrecipients that are units of general purpose local government, except that 24 CFR 85.24 and 85.42 do not apply, and program income is to be used as match under 24 CFR 85.25(g). The requirements of 24 CFR part 84 apply to subrecipients that are private nonprofit organizations, except that 24 CFR 84.23 and 84.53 do not apply, and program income is to be used as the nonfederal share under 24 CFR 84.24(b). These regulations include allowable costs and non-Federal audit requirements.

(d) *Environmental review responsibilities.*

(1) Activities under this part are subject to environmental review by HUD under 24 CFR part 50. The recipient shall supply all available, relevant information necessary for HUD to perform for each property any environmental review required by 24 CFR part 50. The recipient also shall carry out mitigating measures required by HUD or select alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement (EIS).

(2) The recipient or subrecipient, or any contractor of the recipient or subrecipient, may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for eligible activities under this part, until HUD has

performed an environmental review under 24 CFR part 50 and the recipient has received HUD approval of the property.

(e) *Davis-Bacon Act*. The provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a-5) do not apply to the ESG program.

(f) *Procurement of Recovered Materials*. The recipient and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 576.408 Displacement, relocation, and acquisition.

(a) *Minimizing displacement*. Consistent with the other goals and objectives of Emergency Solutions Grant (ESG), the recipient and its subrecipients must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under Emergency Solutions Grant (ESG).

(b) *Temporary relocation not permitted*. No tenant-occupant of housing (a dwelling unit) that is converted into an emergency shelter may be required to relocate temporarily for a project assisted with ESG funds, or be required to move to another unit in the same building/complex. When a tenant moves for a project assisted with ESG funds under conditions that trigger the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 42 U.S.C. 4601-4655, as described in paragraph (c) of this section, the tenant should be treated as permanently displaced and offered relocation assistance and payments consistent with that paragraph.

(c) *Relocation assistance for displaced persons*. (1) *In general*. A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with, the URA and 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601 *et seq.*). Whenever possible, minority persons shall be given reasonable opportunities to relocate to comparable and suitable decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require providing a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. (See 49 CFR 24.205(c)(2)(ii)(D).) As required by Section 504 of the Rehabilitation Act (29 U.S.C. 794) and 49 CFR part 24, replacement dwellings must also contain the accessibility features needed by displaced persons with disabilities.

(2) Displaced Person.

(i) For purposes of paragraph (c) of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm, including any corporation, partnership, or association) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under the ESG program. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(A) After the owner (or person in control of the site) issues a notice to move permanently from the property or refuses to renew an expiring lease, if the move occurs on or after:

(I) The date of the submission by the recipient (or subrecipient, as applicable) of an application for assistance to HUD (or the recipient, as applicable) that is later approved and funded if the recipient (or subrecipient, as applicable) has site control as evidenced by a deed, sales contract, or option contract to acquire the property; or

(II) The date on which the recipient (or subrecipient, as applicable) selects the applicable site, if the recipient (or subrecipient, as applicable) does not have site

- control at the time of the application, provided that the recipient (or subrecipient, as applicable) eventually obtains control over the site;
- (B) Before the date described in paragraph (c)(2)(i)(A) of this section, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or
- (C) By a tenant-occupant of a dwelling unit and the tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project.

(ii) Notwithstanding paragraph (c)(2)(i) of this section, a person does not qualify as a displaced person if:

- (A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement; violation of applicable Federal, State or local law, or other good cause; and the recipient determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.
- (B) The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced), and the fact that the person would not qualify as a "displaced person" (or for any assistance under this section) as a result of the project;
- (C) The person is ineligible under 49 CFR 24.2(a)(9)(ii); or
- (D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) The recipient or subrecipient may, at any time, request that HUD to determine whether a displacement is or would be covered by this rule.

(3) *Initiation of negotiations.* For purposes of determining the type of replacement housing payment assistance to be provided to a displaced person pursuant to this section:

- (i) If the displacement is the direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, "initiation of negotiations" means the execution of the agreement between the recipient and the subrecipient or the agreement between the recipient (or subrecipient, as applicable) and the person owning or controlling the property;
- (ii) If site control is only evidenced by an option contract to acquire the property, the "initiation of negotiations" does not become effective until the execution of a written agreement that creates a legally enforceable commitment to proceed with the purchase, such as a sales contract.

(d) *Real property acquisition requirements.* The acquisition of real property, whether funded privately or publicly, for a project assisted with Emergency Solutions Grant (ESG) funds is subject to the URA and Federal governmentwide regulations at 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the recipient's (or subrecipient's, if applicable) determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the recipient under 49 CFR 24.10. A low-income person who disagrees with the recipient's determination may submit a written request for review of that determination by the appropriate HUD field office.

Subpart F—Grant Administration

§ 576.500 Recordkeeping and reporting requirements.

(a) *In general.* The recipient must have policies and procedures to ensure the requirements of this part are met. The policies and procedures must be established in writing and implemented by the recipient and its subrecipients to ensure that ESG funds are used in accordance with the requirements. In addition, sufficient records must be established and maintained to enable the recipient and HUD to determine whether ESG requirements are being met.

(b) *Homeless status.* The recipient must maintain and follow written intake procedures to ensure compliance with the homeless definition in §576.2. The procedures must require documentation at intake of the evidence relied upon to establish and verify homeless status. The procedures must establish the order of priority for obtaining evidence as third-party documentation first, intake worker observations second, and certification from the person seeking assistance third. However, lack of third-party documentation must not prevent an individual or family from being immediately admitted to emergency shelter, receiving street outreach services, or being immediately admitted to shelter or receiving services provided by a victim service provider. Records contained in an HMIS or comparable database used by victim service or legal service providers are acceptable evidence of third-party documentation and intake worker observations if the HMIS retains an auditable history of all entries, including the person who entered the data, the date of entry, and the change made; and if the HMIS prevents overrides or changes of the dates on which entries are made.

(1) If the individual or family qualifies as homeless under paragraph (1)(i) or (ii) of the homeless definition in §576.2, acceptable evidence includes a written observation by an outreach worker of the conditions where the individual or family was living, a written referral by another housing or service provider, or a certification by the individual or head of household seeking assistance.

(2) If the individual qualifies as homeless under paragraph (1)(iii) of the homeless definition in §576.2, because he or she resided in an emergency shelter or place not meant for human habitation and is exiting an institution where he or she resided for 90 days or less, acceptable evidence includes the evidence described in paragraph (b)(1) of this section and one of the following:

- (i) Discharge paperwork or a written or oral referral from a social worker, case manager, or other appropriate official of the institution, stating the beginning and end dates of the time residing in the institution. All oral statements must be recorded by the intake worker; or
- (ii) Where the evidence in paragraph (b)(2)(i) of this section is not obtainable, a written record of the intake worker's due diligence in attempting to obtain the evidence described in paragraph (b)(2)(i) and a certification by the individual seeking assistance that states he or she is exiting or has just exited an institution where he or she resided for 90 days or less.

(3) If the individual or family qualifies as homeless under paragraph (2) of the homeless definition in §576.2, because the individual or family will imminently lose their housing, the evidence must include:

(i)

(A) A court order resulting from an eviction action that requires the individual or family to leave their residence within 14 days after the date of their application for homeless assistance; or the equivalent notice under applicable state law, a Notice to Quit, or a Notice to Terminate issued under state law;

(B) For individuals and families whose primary nighttime residence is a hotel or motel room not paid for by charitable organizations or federal, state, or local government programs for low-income individuals, evidence that the individual or family lacks the resources necessary to reside there for more than 14 days after the date of application for homeless assistance; or

(C) An oral statement by the individual or head of household that the owner or renter of the housing in which they currently reside will not allow them to stay for more than 14 days after the date of application for homeless assistance. The intake worker must record the statement and certify that it was found credible. To be found credible, the oral statement must either: (I) be verified by the owner or renter of the housing in which the individual or family resides at the time of application for homeless assistance and documented by a written certification by the owner or renter or by the intake worker's recording of the owner or renter's oral statement; or (II) if the intake worker is unable to contact the owner or renter, be documented by a written certification by the intake worker of his or her due diligence in attempting to obtain the owner or renter's verification and the written certification by the individual or head of household seeking assistance that his or her statement was true and complete;

(ii) Certification by the individual or head of household that no subsequent residence has been identified; and

(iii) Certification or other written documentation that the individual or family lacks the resources and support networks needed to obtain other permanent housing.

(4) If the individual or family qualifies as homeless under paragraph (3) of the homeless definition in §576.2, because the individual or family does not otherwise qualify as homeless under the homeless definition but is an unaccompanied youth under 25 years of age, or homeless family with one or more children or youth, and is defined as homeless under another Federal statute or section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), the evidence must include:

- (i) For paragraph (3)(i) of the homeless definition in §576.2, certification of homeless status by the local private nonprofit organization or state or local governmental entity responsible for administering assistance under the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*), the Head Start Act (42 U.S.C. 9831 *et seq.*), subtitle N of the Violence Against Women Act of 1994 (42 U.S.C. 14043e *et seq.*), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*), section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*), as applicable;
- (ii) For paragraph (3)(ii) of the homeless definition in §576.2, referral by a housing or service provider, written observation by an outreach worker, or certification by the homeless individual or head of household seeking assistance;
- (iii) For paragraph (3)(iii) of the homeless definition in §576.2, certification by the individual or head of household and any available supporting documentation that the individual or family moved two or more times during the 60-day period immediately preceding the date of application for homeless assistance, including: recorded statements or records obtained from each owner or renter of housing, provider of shelter or housing, or social worker, case worker, or other appropriate official of a hospital or institution in which the individual or family resided; or, where these statements or records are unobtainable, a written record of the intake worker's due diligence in attempting to obtain these statements or records. Where a move was due to the individual or family fleeing domestic violence, dating violence, sexual assault, or stalking, then the intake worker may alternatively obtain a written certification from the individual or head of household seeking assistance that they were fleeing that situation and that they resided at that address; and
- (iv) For paragraph (3)(iv) of the homeless definition in §576.2, written diagnosis from a professional who is licensed by the state to diagnose and treat that condition (or intake staff-recorded observation of disability that within 45 days of date of the application for assistance is confirmed by a professional who is licensed by the state to diagnose and treat that condition); employment records; department of corrections records; literacy, English proficiency tests; or other reasonable documentation of the conditions required under paragraph (3)(iv) of the homeless definition.

(5) If the individual or family qualifies under paragraph (4) of the homeless definition in §576.2, because the individual or family is fleeing domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions related to violence, then acceptable evidence includes an oral statement by the individual or head of household seeking assistance that they are fleeing that situation, that no subsequent residence has been identified and that they lack the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other housing. If the individual or family is receiving shelter or services provided by a victim service provider, the oral statement must be documented by either a certification by the individual or head of household; or a certification by the intake worker. Otherwise, the oral statement that the individual or head of household seeking assistance has not identified a subsequent residence and lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain housing must be documented by a certification by the individual or head of household that the oral statement is true and complete, and, where the safety of the individual or family would not be jeopardized, the domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening condition must be verified by a written observation by the intake worker or a written referral by a housing or service provider, social worker, legal assistance provider, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or any other organization from whom the individual or head of household has sought assistance for domestic violence, dating violence, sexual assault, or stalking. The written referral or observation need only include the minimum amount of information necessary to document that the individual or family is fleeing, or attempting to flee domestic violence, dating violence, sexual assault, and stalking.

(c) *At risk of homelessness status.* For each individual or family who receives Emergency Solutions Grant (ESG) homelessness prevention assistance, the records must include the evidence relied upon to establish and verify the individual or family's "at risk of homelessness" status. This evidence must include an intake and certification form that meets HUD specifications and is completed by the recipient or subrecipient. The evidence must also include:

(1) If the program participant meets the criteria under paragraph (1) of the "at risk of homelessness" definition in §576.2:

- (i) The documentation specified under this section for determining annual income;
- (ii) The program participant's certification on a form specified by HUD that the program participant has insufficient financial resources and support networks; e.g., family, friends, faith-based or other social networks, immediately available to attain housing stability and meets one or more of the conditions under paragraph (1)(iii) of the definition of "at risk of homelessness" in §576.2;
- (iii) The most reliable evidence available to show that the program participant does not have sufficient resources or support networks; e.g., family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the "homeless" definition. Acceptable evidence includes:
 - (A) Source documents (e.g., notice of termination from employment, unemployment compensation statement, bank statement, health-care bill showing arrears, utility bill showing arrears);
 - (B) To the extent that source documents are unobtainable, a written statement by the relevant third party (e.g., former employer, public administrator, relative) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party that the applicant meets one or both of the criteria under paragraph (1)(iii) of the definition of "at risk of homelessness" in §576.2; or
 - (C) To the extent that source documents and third-party verification are unobtainable, a written statement by the recipient's or subrecipient's intake staff describing the efforts taken to obtain the required evidence; and
- (iv) The most reliable evidence available to show that the program participant meets one or more of the conditions under paragraph (1)(iii) of the definition of "at risk of homelessness" in §576.2. Acceptable evidence includes:

- (A) Source documents that evidence one or more of the conditions under paragraph (1)(iii) of the definition (e.g., eviction notice, notice of termination from employment, bank statement);
- (B) To the extent that source documents are unobtainable, a written statement by the relevant third party (e.g., former employer, owner, primary leaseholder, public administrator, hotel or motel manager) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party that the applicant meets one or more of the criteria under paragraph (1)(iii) of the definition of "at risk of homelessness"; or
- (C) To the extent that source documents and third-party verification are unobtainable, a written statement by the recipient's or subrecipient's intake staff that the staff person has visited the applicant's residence and determined that the applicant meets one or more of the criteria under paragraph (1)(iii) of the definition or, if a visit is not practicable or relevant to the determination, a written statement by the recipient's or subrecipient's intake staff describing the efforts taken to obtain the required evidence; or

(2) If the program participant meets the criteria under paragraph (2) or (3) of the "at risk of homelessness" definition in §576.2, certification of the child or youth's homeless status by the agency or organization responsible for administering assistance under the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*), the Head Start Act (42 U.S.C. 9831 *et seq.*), subtitle N of the Violence Against Women Act of 1994 (42 U.S.C. 14043e *et seq.*), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*), section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*), as applicable.

(d) *Determinations of ineligibility.* For each individual and family determined ineligible to receive Emergency Solutions Grant (ESG) assistance, the record must include documentation of the reason for that determination.

(e) *Annual income.* For each program participant who receives homelessness prevention assistance, or who receives rapid re-housing assistance longer than one year, the following documentation of annual income must be maintained:

- (1) Income evaluation form containing the minimum requirements specified by HUD and completed by the recipient or subrecipient; and
- (2) Source documents for the assets held by the program participant and income received over the most recent period for which representative data is available before the date of the evaluation (e.g., wage statement, unemployment compensation statement, public benefits statement, bank statement);
- (3) To the extent that source documents are unobtainable, a written statement by the relevant third party (e.g., employer, government benefits administrator) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party of the income the program participant received over the most recent period for which representative data is available; or
- (4) To the extent that source documents and third party verification are unobtainable, the written certification by the program participant of the amount of income the program participant received for the most recent period representative of the income that the program participant is reasonably expected to receive over the 3-month period following the evaluation.

(f) *Program participant records.* In addition to evidence of homeless status or "at risk of homelessness" status, as applicable, records must be kept for each program participant that document:

- (1) The services and assistance provided to that program participant, including, as applicable, the security deposit, rental assistance, and utility payments made on behalf of the program participant;
- (2) Compliance with the applicable requirements for providing services and assistance to that program participant under the program components and eligible activities provisions at §576.101 through §576.106, the provision on determining eligibility and amount and type of assistance at §576.401(a) and (b), and the provision on using appropriate assistance and services at §576.401(d) and (e); and
- (3) Where applicable, compliance with the termination of assistance requirement in §576.402.

(g) *Centralized or coordinated assessment systems and procedures.* The recipient and its subrecipients must keep documentation evidencing the use of, and written intake procedures for, the centralized or coordinated assessment system(s) developed by the Continuum of Care(s) in accordance with the requirements established by HUD.

(h) *Rental assistance agreements and payments.* The records must include copies of all leases and rental assistance agreements for the provision of rental assistance, documentation of payments made to owners for the provision of rental assistance, and supporting documentation for these payments, including dates of occupancy by program participants.

(i) *Utility allowance.* The records must document the monthly allowance for utilities (excluding telephone) used to determine compliance with the rent restriction.

(j) *Shelter and housing standards.* The records must include documentation of compliance with the shelter and housing standards in §576.403, including inspection reports.

(k) *Emergency shelter facilities.* The recipient must keep records of the emergency shelters assisted under the ESG program, including the amount and type of assistance provided to each emergency shelter. As applicable, the recipient's records must also include documentation of the value of the building before the rehabilitation of an existing emergency shelter or after the conversion of a building into an emergency shelter and copies of the recorded deed or use restrictions.

(l) *Services and assistance provided.* The recipient must keep records of the types of essential services, rental assistance, and housing stabilization and relocation services provided under the recipient's program and the amounts spent on these services and assistance. The recipient and its subrecipients that are units of general purpose local government must keep records to demonstrate compliance with the maintenance of effort

requirement, including records of the unit of the general purpose local government's annual budgets and sources of funding for street outreach and emergency shelter services.

(m) *Coordination with Continuum(s) of Care and other programs.* The recipient and its subrecipients must document their compliance with the requirements of §576.400 for consulting with the Continuum(s) of Care and coordinating and integrating ESG assistance with programs targeted toward homeless people and mainstream service and assistance programs.

(n) *HMIS.* The recipient must keep records of the participation in HMIS or a comparable database by all projects of the recipient and its subrecipients.

(o) *Matching.* The recipient must keep records of the source and use of contributions made to satisfy the matching requirement in §576.201. The records must indicate the particular fiscal year grant for which each matching contribution is counted. The records must show how the value placed on third-party, noncash contributions was derived. To the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocation of regular personnel costs.

(p) *Conflicts of interest.* The recipient and its subrecipients must keep records to show compliance with the organizational conflicts-of-interest requirements in §576.404(a), a copy of the personal conflicts of interest policy or codes of conduct developed and implemented to comply with the requirements in §576.404(b), and records supporting exceptions to the personal conflicts of interest prohibitions.

(q) *Homeless participation.* The recipient must document its compliance with the homeless participation requirements under §576.405.

(r) *Faith-based activities.* The recipient and its subrecipients must document their compliance with the faith-based activities requirements under §576.406.

(s) *Other Federal requirements.* The recipient and its subrecipients must document their compliance with the Federal requirements in §576.407, as applicable, including:

- (1) Records demonstrating compliance with the nondiscrimination and equal opportunity requirements under §576.407(a), including data concerning race, ethnicity, disability status, sex, and family characteristics of persons and households who are applicants for, or program participants in, any program or activity funded in whole or in part with ESG funds and the affirmative outreach requirements in §576.407(b).
- (2) Records demonstrating compliance with the uniform administrative requirements in 24 CFR part 85 (for governments) and 24 CFR part 84 (for nonprofit organizations).
- (3) Records demonstrating compliance with the environmental review requirements, including flood insurance requirements.
- (4) Certifications and disclosure forms required under the lobbying and disclosure requirements in 24 CFR part 87.

(t) *Relocation.* The records must include documentation of compliance with the displacement, relocation, and acquisition requirements in §576.408.

(u) *Financial records.*

- (1) The recipient must retain supporting documentation for all costs charged to the ESG grant.
- (2) The recipient and its subrecipients must keep documentation showing that ESG grant funds were spent on allowable costs in accordance with the requirements for eligible activities under §576.101-§576.109 and the cost principles in OMB Circulars A-87 (2 CFR part 225) and A-122 (2 CFR part 230).
- (3) The recipient and its subrecipients must retain records of the receipt and use of program income.
- (4) The recipient must keep documentation of compliance with the expenditure limits in §576.100 and the expenditure deadline in §576.203.

(v) *Subrecipients and contractors.*

(1) The recipient must retain copies of all solicitations of and agreements with subrecipients, records of all payment requests by and dates of payments made to subrecipients, and documentation of all monitoring and sanctions of subrecipients, as applicable. If the recipient is a State, the recipient must keep records of each recapture and distribution of recaptured funds under §576.501.

(2) The recipient and its subrecipients must retain copies of all procurement contracts and documentation of compliance with the procurement requirements in 24 CFR 85.36 and 24 CFR 84.40–84.48.

(3) The recipient must ensure that its subrecipients comply with the recordkeeping requirements specified by the recipient and HUD notice or regulations.

(w) *Other records specified by HUD.* The recipient must keep other records specified by HUD.

(x) *Confidentiality.*

(1) The recipient and its subrecipients must develop and implement written procedures to ensure:

(i) All records containing personally identifying information (as defined in HUD's standards for participation, data collection, and reporting in a local HMIS) of any individual or family who applies for and/or receives ESG assistance will be kept secure and confidential;

(ii) The address or location of any domestic violence, dating violence, sexual assault, or stalking shelter project assisted under the ESG will not be made public, except with written authorization of the person responsible for the operation of the shelter; and

(iii) The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of the recipient or subrecipient and consistent with state and local laws regarding privacy and obligations of confidentiality.

(2) The confidentiality procedures of the recipient and its subrecipients must be in writing and must be maintained in accordance with this section.

(y) *Period of record retention.* All records pertaining to each fiscal year of ESG funds must be retained for the greater of 5 years or the period specified below. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(1) Documentation of each program participant's qualification as a family or individual at risk of homelessness or as a homeless family or individual and other program participant records must be retained for 5 years after the expenditure of all funds from the grant under which the program participant was served;

(2) Where ESG funds are used for the renovation of an emergency shelter involves costs charged to the ESG grant that exceed 75 percent of the value of the building before renovation, records must be retained until 10 years after the date that ESG funds are first obligated for the renovation; and

(3) Where ESG funds are used to convert a building into an emergency shelter and the costs charged to the ESG grant for the conversion exceed 75 percent of the value of the building after conversion, records must be retained until 10 years after the date that ESG funds are first obligated for the conversion.

(z) *Access to records.*

(1) *Federal government rights.* Notwithstanding the confidentiality procedures established under paragraph (w) of this section, HUD, the HUD Office of the Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, must have the right of access to all books, documents, papers, or other records of the recipient and its subrecipients that are pertinent to the ESG grant, in order to make audits, examinations, excerpts, and transcripts. These rights of access are not limited to the required retention period but last as long as the records are retained.

(2) *Public rights.* The recipient must provide citizens, public agencies, and other interested parties with reasonable access (consistent with state and local laws regarding privacy and obligations of confidentiality and the confidentiality requirements in this part) to records regarding any uses of ESG funds the recipient received during the preceding 5 years.

(aa) *Reports.* The recipient must collect and report data on its use of ESG funds in the Integrated Disbursement and Information System (IDIS) and other reporting systems, as specified by HUD. The recipient must also

comply with the reporting requirements in 24 CFR parts 85 and 91 and the reporting requirements under the Federal Funding Accountability and Transparency Act of 2006, (31 U.S.C. 6101 note), which are set forth in appendix A to 2 CFR part 170.

§ 576.501 Enforcement.

(a) Performance reviews.

(1) HUD will review the performance of each recipient in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from the recipient and, when appropriate, its subrecipients, as well as information from onsite monitoring, audit reports, and information from IDIS and HMIS. Where applicable, HUD may also consider relevant information pertaining to the recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the recipient.

(2) If HUD determines preliminarily that the recipient or one of its subrecipients has not complied with an ESG program requirement, HUD will give the recipient notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD and on the basis of substantial facts and data, that the recipient has complied with Emergency Solutions Grant (ESG) requirements. HUD may change the method of payment to require the recipient to obtain HUD's prior approval each time the recipient draws down Emergency Solutions Grant (ESG) funds. To obtain prior approval, the recipient may be required to manually submit its payment requests and supporting documentation to HUD in order to show that the funds to be drawn down will be expended on eligible activities in accordance with all ESG program requirements.

(3) If the recipient fails to demonstrate to HUD's satisfaction that the activities were carried out in compliance with ESG program requirements, HUD will take one or more of the remedial actions or sanctions specified in paragraph (b) of this section.

(b) Remedial actions and sanctions. Remedial actions and sanctions for a failure to meet an ESG program requirement will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

(1) HUD may instruct the recipient to submit and comply with proposals for action to correct, mitigate, and prevent noncompliance with ESG requirements, including:

- (i) Preparing and following a schedule of actions for carrying out activities affected by the noncompliance, including schedules, timetables, and milestones necessary to implement the affected activities;
- (ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;
- (iii) Canceling or revising activities likely to be affected by the noncompliance, before expending ESG funds for the activities;
- (iv) Reprogramming ESG funds that have not yet been expended from affected activities to other eligible activities;
- (v) Suspending disbursement of ESG funds for some or all activities;
- (vi) Reducing or terminating the remaining grant of a subrecipient and reallocating those funds to other subrecipients; and
- (vii) Making matching contributions before or as draws are made from the recipient's ESG grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD deems it necessary to preclude the further expenditure of funds for affected activities.

(4) HUD may remove the recipient from participation in reallocations of funds under subpart D of this part.

(5) HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.

(6) HUD may require the recipient to reimburse its line of credit in an amount equal to the funds used for the affected activities.

- (7) HUD may reduce or terminate the remaining grant of a recipient and reallocate those funds to other recipients in accordance with subpart D of this part.
- (8) HUD may condition a future grant.
- (9) HUD may take other remedies that are legally available.

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with an ESG program requirement or its subgrant agreement, the recipient must take appropriate actions, as prescribed for HUD in paragraphs (a) and (b) of this section. If the recipient is a State and funds become available as a result of an action under this section, the recipient must reallocate those funds to other subrecipients as soon as practicable. If the recipient is a unit of general purpose local government of territory, it must either reallocate those funds to other subrecipients or reprogram the funds for other activities to be carried out by the recipient as soon as practicable. The recipient must amend its Consolidated Plan in accordance with its citizenship participation plan if funds become available and are reallocated or reprogrammed under this section. The reallocated or reprogrammed funds must be used by the expenditure deadline in §576.203.



CITY OF AUSTIN
EMERGENCY SOLUTIONS GRANT (ESG)
HOMELESS ELIGIBILITY FORM

ESG ELIGIBILITY CATEGORY: *(check only one)*

NOTE: *Form is not complete unless the client and staff have signed the second side of document.*

☐

Category 1- Literally Homeless

- (1) Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
- Has a primary nighttime residence that is a public or private place not meant for human habitation;
 - Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, and local government programs; or
 - Is exiting an institution where (s)he has resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.

DOCUMENTATION REQUIRED IN HUD'S PREFERRED ORDER:

- Third Party/Written:
If unsheltered: Written referral by of street outreach, law enforcement, EMS, or other shelter record, or homeless certification; or
If sheltered/exiting an institution: HMIS shelter stay record, or homeless certification, or referral from shelter services or other housing provider; or
- Written observation by the intake staff worker; or
- Self-Certification by the individual or head of household seeking assistance stating that s(he) was living on the streets or in shelter;
- For individuals exiting an institution- one of the forms of evidence above and:
 - Discharge paperwork or written/oral referral, or
 - Written record of intake worker's due diligence to obtain evidence and certification by individual that they exited institution.

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Category 2- Imminently Losing Primary Nighttime Residence– Ineligible Category for Rapid Rehousing

- (2) Individual or family who will imminently lose their primary nighttime residence within 14 days, provided that:
- No subsequent residence has been identified; and
 - The household lacks the resources or support networks needed to obtain other permanent housing.

DOCUMENTATION REQUIRED – at least one of the following must state the household must leave within 14 days:

- A court order resulting from an eviction notice or equivalent notice, or a formal eviction notice; or
- For individuals in hotels or motels that they are paying for, evidence that the individual or family lacks the necessary financial resources to stay for more than 14 days; or
- An oral statement by the individual or head of household stating that the owner or renter of the residence will not allow them to stay for more than 14 days. The intake worker must verify the statement either through contact with the owner or renter, or documentation of due diligence in attempting to obtain such a statement.
- Certification that no subsequent residence has been identified; and
- Self-certification or other written documentation that the individual lacks the financial resources and support necessary to obtain permanent housing.

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Category 3- Persistent Housing Instability– Ineligible Category

People with ALL of these characteristics:

- Unaccompanied youth (less than 25 years of age) or family with children and youth;
- Defined as homeless under other federal statutes (for example the definition used by the Department of Education) who do not otherwise qualify as homeless under HUD's definition;
- Has not had a lease, ownership interest, or occupancy agreement in permanent housing in the 60 days prior to applying for assistance;
- Has moved two or more times in the 60 days immediately prior to applying for assistance;
- Has one or more of the following: chronic disabilities, chronic physical or mental health conditions substance addiction histories of domestic violence or childhood abuse child with a disability two or more barriers to employment, which include
 - lack of a high school degree or GED - illiteracy - low English proficiency - history of incarceration or detention for criminal activity - history of unstable employment

DOCUMENTATION REQUIRED:

- A nonprofit, state, or local government entity that administers the other federal statute must certify that household qualifies as homeless under that statute's definition.
- To document that the individual has not had a lease, occupancy agreement, or ownership interest in housing in the last 60 days, certification by the individual or head of household, written observation by an outreach worker, or referral by a provider.

- To document that the individual or family has moved two times in the past 60 days, a certification from the individual and supporting documentation, including records or statements from each owner or renter of housing, shelter or housing provider, or social worker, case worker, or appropriate official of an institution where the individual or family resided. Where these statements are unobtainable, the intake worker should include a written record of his or her due diligence in attempting to obtain them.
- Evidence of barriers includes: Written diagnosis from a licensed professional, employment records, department of corrections records, literacy, and English proficiency tests. For disability, any of the above, written verification from the Social Security Administration (or a disability check receipt), or observation of the intake worker of disability, which must be confirmed within 45 days by an appropriate professional.

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Category 4- Fleeing/Attempting to Flee Domestic Violence

(4) Any individual or family who:

- Is fleeing, or is attempting to flee domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence;
- Has no other residence; and
- Lacks the resources or support networks to obtain other permanent housing.

DOCUMENTATION REQUIRED:

- **For victim service providers:**
 - An oral statement by the individual or head of household seeking assistance which states: they are fleeing they have no subsequent residence; and they lack resources. Statement must be documented by a self-certification or a certification by the intake worker.
- **For non-victim service providers:**
 - Oral statement by the individual or head of household seeking assistance that they are fleeing. This statement is documented by a self-certification or by the caseworker. Where the safety of the individual or family is not jeopardized, the oral statement must be verified; and
 - Certification by the individual or head of household that no subsequent residence has been identified; and
 - Self-certification or other written documentation that the individual lacks the financial resources and support necessary to obtain permanent housing.

DOES THIS CLIENT ALSO MEET THE FOLLOWING DEFINITION OF A CHRONICALLY HOMELESS PERSON?

Chronically homeless means:

- (1) A "homeless individual with a disability," as defined in section 401(9) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(9)), who: (i) Lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and (ii) Has been homeless and living as described in paragraph (1)(i) of this definition continuously for at least 12 months or on at least 4 separate occasions in the last 3 years, as long as the combined occasions equal at least 12 months and each break in homelessness separating the occasions included at least 7 consecutive nights of not living as described in paragraph (1)(i). Stays in institutional care facilities for fewer than 90 days will not constitute as a break in homelessness, but rather such stays are included in the 12-month total, as long as the individual was living or residing in a place not meant for human habitation, a safe haven, or an emergency shelter immediately before entering the institutional care facility;
- (2) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or
- (3) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) or (2) of this definition, including a family whose composition has fluctuated while the head of household has been homeless. (Updated 12-4-15)

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YES

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NO

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DON'T KNOW

If **YES**, then provide the client information requested below:

HOUSING HISTORY FOR CHRONICALLY HOMELESS PERSONS

MOST RECENT YEAR

Month/Year	Description of Homelessness

SECOND YEAR

Month/Year	Description of Homelessness

THIRD YEAR

Month/Year	Description of Homelessness

The above statement of my homeless status is true and complete.

CLIENT NAME (Printed)

CLIENT SIGNATURE

DATE

FOR INTAKE STAFF ONLY:

Verification Methods: Describe methods to obtain third party documentation (shelter records; outreach programs; medical services; law enforcement; etc.). Describe the outcome of the efforts to obtain documents.

The above statements regarding this client's ESG homeless eligibility is true and complete to the best of my knowledge. I have attempted to obtain third party documentation to the best of my ability.

INTAKE STAFF SIGNATURE

DATE



CITY OF AUSTIN
Austin Public Health Department

EMERGENCY SOLUTIONS GRANT PROGRAM (ESG)
PROGRAM STANDARDS AND GUIDELINES

A. ESG PROGRAM DESCRIPTION

- I. Definitions**
- II. General**
- III. Eligible organizations**
- IV. Ineligible Organizations**
- V. Financial Terms**
- VI. Matching Funds**
- VII. Eligible Activities**
- VIII. Client Eligibility**
- IX. Emergency Shelter**
- X. Rapid Rehousing and Other ESG-funded Services**
- XI. Coordination Between Service Providers**
- XII. Homeless Management Information System (HMIS)**

B. ESG PROGRAM MANAGEMENT

- I. Grant Subaward Process**
- II. Contracting**
- III. Recordkeeping Requirements**
- IV. Reporting Requirements**
- V. Program Limitations**
- VI. Performance Standards**
- VII. Accessibility**

1. ESG PROGRAM DESCRIPTION

I. Definitions Terms used herein will have the following meanings:

APH – Austin Public Health

At Risk of Homelessness-

- (1) An individual or family who: (i) Has an annual income below 30% of median family income for the area; AND (ii) Does not have sufficient resources or support networks immediately available to prevent them from moving to an emergency shelter or another place defined in Category 1 of the "homeless" definition; AND (iii) Meets one of the following conditions: (A) Has moved because of economic reasons 2 or more times during the 60 days immediately preceding the application for assistance; OR (B) Is living in the home of another because of economic hardship; OR (C) Has been notified that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance; OR (D) Lives in a hotel or motel and the cost is not paid for by charitable organizations or by Federal, State, or local government programs for low-income individuals; OR (E) Lives in an SRO or efficiency apartment unit in which there reside more than 2 persons or lives in a larger housing unit in which there reside more than one and a half persons per room; OR (F) Is exiting a publicly funded institution or system of care; OR (G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved Consolidated Plan;
- (2) A child or youth who does not qualify as homeless under the homeless definition, but qualifies as homeless under another Federal statute;
- (3) An unaccompanied youth who does not qualify as homeless under the homeless definition, but qualifies as homeless under section 725(2) of the McKinney-Vento Homeless Assistance Act, and the parent(s) or guardian(s) or that child or youth if living with him or her.

CDO- Community Development Officer;

Chronically homeless means:

(1) A "homeless individual with a disability," as defined in section 401(9) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(9)), who: (i) Lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and (ii) Has been homeless and living as described in paragraph (1)(i) of this definition continuously for at least 12 months or on at least 4 separate occasions in the last 3 years, as long as the combined occasions equal at least 12 months and each break in homelessness separating the occasions included at least 7 consecutive nights of not living as described in paragraph (1)(i). Stays in institutional care facilities for fewer than 90 days will not constitute as a break in homelessness, but rather such stays are included in the 12-month total, as long as the individual was living or residing in a place not meant for human habitation, a safe haven, or an emergency shelter immediately before entering the institutional care facility;

(2) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or

(3) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) or (2) of this definition, including a family whose composition has fluctuated while the head of household has been homeless. (Updated 12-4-15)

City- City of Austin;

ESG- Emergency Solutions Grant program;

Homeless Person(s)-

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

- (i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
 - (ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or
 - (iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;
- (2) An individual or family who will imminently lose their primary nighttime residence, provided that:
- (i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
 - (ii) No subsequent residence has been identified; and
 - (iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks needed to obtain other permanent housing;
- (3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
- (i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);
 - (ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;
 - (iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and
 - (iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or
- (4) Any individual or family who:
- (i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;
 - (ii) Has no other residence; and
 - (iii) Lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, to obtain other permanent housing;
- HUD-** U.S. Department of Housing and Urban Development;
NHCD- Neighborhood Housing and Community Development Office;
Subrecipient- An organization receiving ESG funds from the City to undertake eligible ESG activities.

- II. **General** The Emergency Solutions Grant Program (ESG), formerly known as the Emergency Shelter Grant Program, is funded through the City's Neighborhood Housing and Community Development Office (NHCD), which is made available by the U.S. Department of Housing and Urban Development (HUD). The City utilizes ESG funds to provide an array of services to assist homeless persons and persons at-risk of homelessness.

The ESG program is designed to be the first step in a continuum of assistance to help clients quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness.

The City's Austin Public Health Department is responsible for the implementation of ESG in compliance with the governing regulations of the ESG program. The City's Neighborhood Housing and Community Development Office (NHCD) is responsible for the planning and administration of the ESG program. The Community Development Officer (CDO) of NHCD has the authority to establish processes, procedures, and criteria for the implementation and operation of the program, and to waive compliance with any provision of these guidelines if s/he determines that to do so does not violate any Federal, state, or local law or regulation, and is in the best interest of the City. Nothing contained, stated, or implied in this document shall be construed to limit the authority of the City to administer and carry out the program by whatever means and in whatever manner it deems appropriate.

- III. **Eligible Organizations** The subrecipient must be a unit of local government or a private, non-profit organization, as defined by the Internal Revenue Service tax code, evidenced by having a Federal identification number, filed articles of incorporation, and written organizational by-laws.
- IV. **Ineligible Organizations** An organization will not be eligible to apply for ESG funds if it meets the following conditions:
- A. Outstanding audit or monitoring findings, unless appropriately addressed by a corrective action plan;
 - B. Current appearance on the List of Suspended and Debarred Contractors;
 - C. Terms and conditions of existing contract are not in full compliance;
 - D. History of non-performance with contracts.
- V. **Financial Terms**
- A. Grantee shall expend the City budget in a reasonable manner in relation to Agreement time elapsed and/or Agreement program service delivery schedule.
 - B. All grant funds allocated must be completely spent down within the 24 month allocation period.
 - C. If the Grantee has a remaining balance at the end of the first twelve month period, the Grantee must submit a request to spend down remaining balance to the Assistant Director of the Austin Public Health, Health Equity Community Engagement Division (HECE).
 - D. If cumulative expenditures are not within acceptable amounts, spending rates, or in accordance with grant compliance the City may require the Grantee to: 1) submit an expenditure plan, and/or 2) amend the Agreement budget amount to reflect projected expenditures, as determined by the City.

VI. **Matching Funds** Subrecipient organizations that receive ESG funds must provide a dollar for dollar (or 100%) match to their ESG award amount.

A. Sources of matching funds include:

i. **Cash Contributions**- Cash expended for allowable costs identified in 2 CFR Part 200. *Program Income* for the ESG program can also be used as match funds. Match funds are identified in 2CFR Part 200.306

ii. **Non-Cash Contributions**- The value of any real property, equipment, goods, or services.

B. Funds used to match a previous ESG grant may not be used to match a subsequent award.

VII. **Eligible Activities** Each sub-recipient will be allocated funding by activity type, and may have multiple activities in one program. The following is a list of eligible activities for the ESG Program:

A. ***Street Outreach***- Support services limited to providing emergency care on the streets, including engagement, case management, emergency health and mental health services, and transportation;

B. ***Emergency Shelter***- Includes essential services, case management, child care, education, employment, outpatient health services legal services, life skills training, mental health & substance abuse services, transportation, shelter operations, and funding for hotel/motel stays under certain conditions;

C. ***Homeless Prevention***- Includes housing relocation & stabilization services and short/medium-term rental assistance for individuals/families who are at risk of homelessness;

D. ***Rapid Re-Housing***- Includes housing relocation & stabilization services and short/medium-term rental assistance to help individuals/families move quickly into permanent housing and achieve stability;

E. ***Homeless Management Information System (HMIS)*** costs; and

F. ***ESG Administration*** costs.

VIII. **Client Eligibility**

In order to be eligible for services under the ESG program, clients must meet HUD's definition of homelessness or at-risk of homelessness, and must meet annual income guidelines for homelessness prevention activities.

A. **ESG Eligibility Documentation**

i. **Homelessness Prevention**: *This program will not provide Homelessness Prevention Services.*

ii. **Rapid Re-Housing**:

a. Please refer to the *Homeless Eligibility Form* for more information on documenting homelessness for ESG clients.

b. **Subrecipient agencies must collect the required supporting documentation requested in the Homeless Eligibility Form in order for clients to be considered eligible for services.**

c. All eligibility and supporting documentation for Rapid Re-Housing clients must be maintained in each client's file.

- d. Clients will be referred to ESG programs through the Coordinated Assessment or Coordinated Entry process.
 - e. CDU-Specific Client Eligibility Requirements
 - i. Referral through Coordinated Assessment
 - ii. HIV Positive, homeless individuals
 - f. DACC-Specific Eligibility Requirements
 - i. Referral through Coordinated Assessment
 - g. Front Steps Specific Eligibility Requirements
 - i. Referral through Coordinated Assessment
 - ii. Targeted to those who sheltered at ARCH and coming from the streets outside the ARCH
- B. Confidentiality of Client Information
- a. Subrecipients must have written client confidentiality procedures in their program policies and procedures that conform to items *b – d* below:
 - b. All records containing personally identifying information of any individual or family who applies for and/or receives ESG assistance must be kept secure and confidential.
 - c. The address or location of any domestic violence project assisted under ESG shall not be made public.
 - d. The address or location of any housing for a program participant shall not be made public.

IX. Emergency Shelter

Requirement: Policies and procedures for admission, diversion, referral and discharge by emergency shelters assisted under ESG, including standards regarding length of stay, if any, and safeguards to meet the safety and shelter needs of special populations.

The ESG-funded emergency shelter, Austin Resource Center for the Homeless, or ARCH is a "low-demand" emergency shelter, which means that restrictions are not placed on the number of times clients may visit ARCH for services and that access to shelter does not require meeting set criteria or participation goals. The ARCH provides Day Resource Center, Emergency Night Shelter for men, Case Management, and other co-located services provided on-site by the following local service providers.

Sleeping Unit Reservation System: Of the 190 sleeping units, approximately 25 will be given to clients via a lottery system. These individuals do not have a reserved bed from one night to the next, and are informed about the process prior to entering the lottery.

The remaining units are reserved for those working with a Shelter Case Manager. There is no length of stay for the shelter, and in case management, the general length is 6 months with evaluation on a case by case basis. Clients are informed that if they have a reservation, but they do not arrive to check in, their reserved mat or bed will be available to lottery clients. There are also available beds in coordination with the following participating agencies: CommUnityCare Clinic, Veterans Administration (VA), and Austin/Travis County Integral Care, the local mental health authority. All of these case-managed clients work with their case manager to determine a housing plan and are connected to other resources to find permanent

housing. The client is informed of the grievance process, and their end date for services determined on a case by case basis.

Clients are encouraged to work with Case Managers to progress towards personal goals related to obtaining/maintaining sustainable income, exploring viable housing options, and addressing self-care issues that impact progress towards self-sufficiency. Case Management services are based on a Harm Reduction philosophy and the stages in the Trans-theoretical Model of Change. Various techniques, including motivational interviewing, are effectively utilized in working with clients whose needs vary across a spectrum of vulnerability. Men's and women's support groups as well as anger management classes are offered through case management. ARCH clients with domestic violence concerns are offered coordination and referral to appropriate programs on a case by case basis.

Front Steps, the agency administering the ARCH, has been designated as one of the "front doors"/community portals in the Coordinated Assessment process. Using the Vulnerability Index & Service Prioritization Decision Assistance Tool (VI-SPDAT) as part of the Coordinated Assessment process, coupled with more robust data entry into HMIS, clients who score within range and are identified as likely benefitting from receiving Shelter Case Management services will be offered these services as openings in the program become available.

The following is provided in the case that a client is terminated:

1. Written notice to the participant containing a clear statement of the reason for termination.
2. A review of the decision, in which the participant is given the opportunity to present written or oral objections before a person other than the person(or subordinate of the person) who made or approved the termination decisions, AND
3. Prompt written notification to the program participant.

Because the ARCH is a City building, the agencies cannot deny citizens access to the shelter property on a permanent basis.

X. Rapid Rehousing and Other ESG-funded Services

There are no essential services funded by ESG.

There are no homeless prevention services funded by ESG.

Requirement: Policies and procedures for determining and prioritizing which eligible families and individuals will receive rapid re-housing assistance.

All programs funded through the Emergency Solutions Grant will use Coordinated Entry for referrals for the program in order to serve the most vulnerable Rapid Rehousing clients in the community. Agency eligibility could include, for example, HIV status for the Communicable Disease Unit. All programs help clients go through the Coordinated Entry process to access appropriate referrals and community programs.

Each client will be individually assessed for the amount of Rapid Rehousing using progressive engagement and housing first principles. If a client or family needs continued services and financial assistance past the initial date of entry into the program, agencies will work to address those needs until the client exits the program. Other funding sources will be used to address the other service needs of the client such as case management, housing location or financial and rental assistance as needed.

Requirement: Standards for determining the type, amount and duration of housing stabilization and/or relocation services to provide a program participant, including the limits on rapid re-housing assistance.

All Rapid Rehousing programs will include the following components:

- Housing Stability Plan with Exit Strategy
- Progressive Engagement
- Coordination with other HUD funded programs and regular review the program's progress towards the HUD benchmarks:
 - 1) Reducing the length of time program participants spend homeless;
 - 2) Exiting households to permanent housing, and
 - 3) Limiting returns to homelessness within a year of program exit.

Also, all RR programs will provide the following services with ESG funds or with another funding source. If the agency is not able to provide all of these services they will work with a collaborative partner to provide them.

- Housing Location
- Financial Assistance – Rental, Deposits, Application Fees, etc.
- Housing Stability Case Management

ESG Rapid Rehousing Financial Assistance Guidelines:

1. **Security Deposits** are available for no more than 2 months' rent.
2. **Last Month's Rent** is only paid if the last month's rent is necessary for the participant to obtain housing, if it is paid at the same time as the security deposit and first month's rent, and does not exceed one month's rent.
3. **Utility Deposit, Payments and Arrears** is paid if it is within 24 month limit, including up to 6 months of utility arrears, and if the utility account is in the name of the participant or if there is proof of responsibility, and is for eligible gas, electric, water and sewage.
4. **Caps on assistance** by program:
 - o Downtown Austin Community Court: Financial Assistance can include up to \$2300 a year in direct financial assistance for all eligible financial assistance and rental assistance funding, with a 24 month cap of \$4600.
 - o Front Steps: None beyond the regulations above.
 - o Communicable Disease Unit: Does not administer financial assistance and rental assistance.
5. **Changes in household composition.** The limits on the assistance under this section apply to the total assistance an individual receives, either as an individual or as part of a family.
6. **Limit of months of assistance.** No client may receive more than **24 months of assistance** in a three-year period.
7. **Recertification.** Clients will be **recertified** at least every twelve months to determine ongoing eligibility as per 576.401. Recertification will assess clients to see if they do not have an annual income that exceeds 30% AMI, AND lack sufficient resources and support networks to retain housing without ESG assistance.

Requirement: Standards for determining what percentage or amount of rent and utilities cost each program participant must pay while receiving rapid re-housing assistance.

Most clients receiving financial assistance through the Emergency Solutions Grant will have high housing barriers and will be highly vulnerable. Participants are not required to contribute a percentage of their income to rent or utilities, so there are no standards developed.

Requirement: Standards for determining how long a particular program participant will be provided with rental assistance.

Short-term and medium-term rental assistance can be provided to a program participant with up to 24 months of rental assistance during any 3-year period. This assistance may be short-term rental assistance, medium-term rental assistance, payment of rental arrears, or any combination of this assistance.

1. **Short and Medium Term Rental Assistance** - Short-term rental assistance is assistance for up to 3 months of rent; Medium-term rental assistance is assistance for more than 3 months but not more than 24 months of rent; Rental assistance for this program will be tenant-based.
 - o **Rental Assistance use with other subsidies.** Except for a one-time payment of rental arrears on the tenant's portion of the rental payment, rental assistance cannot be provided to a program participant who is receiving tenant-based rental assistance, or living in a housing unit receiving project-based rental assistance or operating assistance, through other public sources. Rental assistance may not be provided to a program participant who has been provided with replacement housing payments under the URA during the period of time covered by the URA payments.
 - o **Fair Market Rent** - Rental Assistance must only be provided if rent does not exceed Fair Market Rent and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.
 - o For purposes of calculating rent, the rent shall equal the sum of the total monthly rent for the unit, any fees required for occupancy under the lease (other than late fees and pet fees) and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.
 - o **Rental assistance agreement.** The recipient or subrecipient may make rental assistance payments only to an owner with whom the recipient or subrecipient has entered into a rental assistance agreement. The rental assistance agreement must set forth the terms under which rental assistance will be provided, including the requirements that apply under this section. The rental assistance agreement must provide that, during the term of the agreement, the owner must give the recipient or subrecipient a copy of any notice to the program participant to vacate the housing unit, or any complaint used under state or local law to commence an eviction action against the program participant.
 - o **Late payments.** The recipient or subrecipient must make timely payments to each owner in accordance with the rental assistance agreement. The rental assistance agreement must contain the same payment due date, grace period, and late payment penalty requirements as the program participant's lease. The recipient or subrecipient is solely responsible for paying late payment penalties that it incurs with non-ESG funds.
 - o **Lease.** Each program participant receiving rental assistance must have a legally binding, written lease for the rental unit, unless the assistance is solely for rental arrears. The lease must be between the owner and the program participant. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance under paragraph (i) of this section, the lease must have an initial term of one year.

2. **Tenant-based rental assistance.** Rental assistance for this program will be tenant-based, and all programs will provide the minimum amount of assistance needed for client to stabilize using the principles of Progressive Engagement.
 - (1) A program participant who receives tenant-based rental assistance may select a housing unit in which to live and may move to another unit or building and continue to receive rental assistance, as long as the program participant continues to meet the program requirements.
 - (2) The recipient may require that all program participants live within a particular area for the period in which the rental assistance is provided.
 - (3) The rental assistance agreement with the owner must terminate and no further rental assistance payments under that agreement may be made if:
 - (i) The program participant moves out of the housing unit for which the program participant has a lease;
 - (ii) The lease terminates and is not renewed; or
 - (iii) The program participant becomes ineligible to receive ESG rental assistance.
3. **Rental Arrears** are paid if the client is assisted with one-time payment of up to 6 months of rental arrears, including any late fees on those arrears. A lease must be present in the file with the participant's name on the lease or a document of the rent payments/financial records, as well as Rent Reasonableness, Lead Based Paint and Habitability Standards forms. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance under paragraph (i) of this section, the lease must have an initial term of one year.
4. **Caps on assistance by program:**
 - o Downtown Austin Community Court: Financial Assistance can include up to \$2300 a year in direct financial assistance for all eligible financial assistance and rental assistance funding, with a 24-month cap of \$4600.
 - o Front Steps: None beyond the regulations above.
 - o Communicable Disease Unit: Does not administer financial assistance and rental assistance.

All clients will be recertified at least every twelve months to determine ongoing eligibility as per 576.401. Recertification will assess clients to see if they do not have an annual income that exceeds 30% AMI, AND lack sufficient resources and support networks to retain housing without ESG assistance.

XI. Coordination Between Service Providers

The following list gives the types of service coordination activities to be undertaken for the ESG Program: Case management, permanent supportive housing, rapid re-housing and housing location and financial assistance.

Services will be coordinated between the downtown Austin Resource Center for the Homeless (ARCH), Downtown Austin Community Court, and in consultation with the local Continuum of Care as well as other service providers such as Austin Travis County Integral Care, Caritas of Austin, Salvation Army, Veterans Administration, Continuum of Care Permanent Supportive Housing programs and other appropriate federal, state and local service providers.

Agency	Case	Permanent	Rapid	Direct Financial
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	Management/ Supportive Services	Supportive Housing	Rehousing/ Housing Location	Assistance
Front Steps- PSH and Rapid Rehousing	X	X	X	X
Caritas of Austin with CoC and City funding	X	X	X	X
Downtown Community Court	X		X	X
Public Health Communicable Disease Unit	X		X	
Other Continuum of Care programs	X	X		
City-funded Social Service Agencies	X	X	X	X

ESG Rapid Rehousing Program Design: All ESG Programs will have all components or coordinate with other funding sources or entities so that all needs of the Rapid Rehousing clients will be adequately addressed.

RR Agency	Case Management/ Supportive Services	Housing Location	Direct Financial Assistance	Rental Assistance
Front Steps	Front Steps	Front Steps	Front Steps HHSP and SSVF; BSS Plus	Front Steps HHSP and SSVF, BSS Plus
Communicable Disease Unit (CDU)	CDU	CDU/DACC ESG	DACC ESG	DACC ESG
Downtown Austin Community Court	DACC	DACC	DACC ESG	DACC ESG

- XII. Homeless Management Information System (HMIS)** Organizations receiving funding from the City of Austin for homelessness prevention and homeless intervention services are required to utilize the Local Homeless Management Information System (HMIS) to track and report client information for individuals who are at risk of homelessness or who are homeless. A high level of data quality is required. All ESG-funded programs will also be working with the community's Coordinated Entry process.

B. ESG PROGRAM MANAGEMENT

Management and operation of approved projects is the responsibility of the Subrecipient. The Subrecipient is the entity that will receive the City contract. Therefore, the subrecipient has the overall responsibility of the project's successful completion.

I. Grant Subaward Process

At its discretion, the City may use a competitive Request for Application and comprehensive review process to award ESG funding to providers of services to homeless persons and persons at-risk of homelessness. Activities will be consistent with the City's Consolidated Plan, in compliance with local, state, and Federal requirements and the governing regulations for use of ESG funds, and in conformance with program standards. The City will enter into written agreements with selected Subrecipients and will work with Subrecipients to ensure that project costs are reasonable, appropriate, and necessary to accomplish the goals and objectives of the City's overall ESG Program. The subrecipient must be able to clearly demonstrate the benefits to be derived by the services provided to homeless individuals, and to low-to-moderate income families. Performance measures will be established in the contract. All ESG award decisions of the City are final.

II. Contracting

Subrecipients must enter into a written contract with the City for performance of the project activities. Once a contract is signed, the subrecipient will be held to all agreements therein.

- A. Members of the Subrecipient organization, volunteers, residents, or subcontractors hired by the organization may carry out activities. Subrecipients must enter into a written contract with the subcontractors carrying out all or any part of an ESG project. All subcontractors must comply with the City and Federal procurement and contracting requirements.
- B. All contracts are severable and may be canceled by the City for convenience. Project funding is subject to the availability of ESG funds and, if applicable, City Council approval.
- C. Amendments - Any amendments to a contract must be mutually agreed upon by the Subrecipient and the City, *in writing*. Amendment requests initiated by the Subrecipient must clearly state the effective date of the amendment, in writing. Austin Public Health (APH) staff will determine if an amendment request is allowable. APH reserves the right to initiate amendments to the contract.
- D. Liability - Subrecipients shall forward Certificates of Insurance to the Austin Public Health Department within 30 calendar days after notification of the award, unless otherwise specified. The City's Risk Management Department will review and approve the liability insurance requirements for each contract. Subrecipients must maintain current insurance coverage throughout the entire contract period, as well as for any subsequent amendments or contract extensions.

III. Recordkeeping Requirements

- a. Project Records- The Subrecipient must manage their contract and maintain records in accordance with City and Federal policies and must be in accordance with sound business and financial management practices, which will be determined by the City. Record retention for all ESG records, including client information, is five years after the expenditure of contract funds.
- b. Client Records- The Subrecipient must maintain the following types of client records to show evidence of services provided under the ESG program:

- i. Client Eligibility records, including documentation of Homelessness, or At-Risk of Homelessness plus income eligibility and support documentation.
- ii. Documentation of Continuum of Care centralized or coordinated assessment (for client intake)
- iii. Financial Assistance backup documentation required for each type of assistance outlined in the previous sections.
- iv. Rental assistance agreements and payments, including security deposits, and all backup documentation required for each type of assistance outlined in the previous sections.

IV. Reporting Requirements

- A. Monthly Payment Requests and Expenditure Reports shall be submitted, in a format prescribed by the City, by the 15th calendar day of the month after the reporting month's end, which identify the allowable expenditures incurred under this contract.
- B. Monthly Matching Funds Reports shall be submitted, in a format prescribed by the City, by the 15th calendar day of the month after the reporting month's end, which identify the allowable matching funds used by the Subrecipient under this contract.
- C. Quarterly performance reports shall be submitted, in a format prescribed by the City, by the 15th calendar day of the month after the quarter end, which identify the activities accomplished under this contract.
- D. The Federal ESG program year ends on September 30th. At completion of all activities, a Contract Closeout Report must be submitted within 30 days of the end of the contract. The subrecipient is required to supply such information, in such form and format as the City and HUD may require. All records and reports must be made available to any authorized City representative upon request and without prior notice.
- E. All ESG Subrecipients must use HMIS to report on clients served by the ESG program.

V. Program Limitations

- A. ESG Administration costs are limited to 7.5% of the total ESG allocation.
- B. ESG Street Outreach and Emergency Shelter costs are limited to the greater of: 60% of the City's 2011-12 ESG grant -or- the amount committed to emergency shelter for the City's 2010-11 ESG allocation.
- C. Program Income - Income derived from any ESG activity must be recorded and reported to APH as program income. Such income may not be retained or disbursed by the subrecipient without written approval from APH and is subject to the same controls and conditions as the Subrecipient's grant allocation.
- D. ESG funds may not be used for lobbying or for any activities designed to influence legislation at any government level.
- E. A church or religious affiliated organization must show secularism when submitting an ESG application.
- F. Any ESG funds that are unallocated after the funding cycle will be reprogrammed by APH. Contracts that show three (3) consecutive months of inactivity (as documented by monthly reports or non-submission of required reports) will be reviewed on a case-by-case basis, and may be irrevocably canceled.

VI. Performance Standards

ESG-funded programs will report into HMIS and have a high level of data quality specified in Section A. XII. Homeless Management Information Systems. HMIS data quality is reviewed quarterly by City staff. All data quality is reviewed by the ECHO HMIS Administrator.

Performance measures will be reviewed quarterly by the City of Austin Austin Public Health Department. Measures will also be reviewed annually by the local Continuum of Care decision-making body, ECHO, during the annual Consolidated Evaluation and Performance Report process.

VII. Accessibility

In order to demonstrate compliance with the Americans with Disabilities Act (ADA) and Section 504 requirements, the following statements must be added to all public notices, advertisements, program applications, program guidelines, program information brochures or packages, and any other material containing general information that is made available to participants, beneficiaries, applicants, or employees:

_____ (*insert the name of your organization*) as a subrecipient of the City of Austin is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please call _____ (*insert your organization's phone number*) (voice) or Relay Texas at 1-800-735-2989 (TDD) for assistance.

_____ (*insert the name of your organization*) como un subreceptor de la Ciudad de Austin se compromete a cumplir con el Decreto de los Americanos Incapacitados. Con solo solicitarlo se proveerán modificaciones e igual acceso a comunicaciones. Para información favor de llamar a _____ (*insert your organization's phone number*) (voz) o Relay Texas 1-800-735-2989 (TDD) para asistencia.

BUSINESS ASSOCIATE AGREEMENT PROVISIONS

This Business Associate Agreement (the "Agreement"), is made by and between the Grantee (Business Associate) and the City (Covered Entity) (collectively the "Parties") to comply with privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160 and 164 ("the Privacy Rule") and security standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160, 162 and 164, subpart C ("the Security Rule"), and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 and regulations promulgated there under and any applicable state confidentiality laws.

RECITALS

WHEREAS, Business Associate provides services outlined in Exhibit A.1 to or on behalf of Covered Entity;

WHEREAS, in connection with these services, Covered Entity discloses to Business Associate certain protected health information that is subject to protection under the HIPAA Rules; and

WHEREAS, the HIPAA Rules require that Covered Entity receive adequate assurances that Business Associate will comply with certain obligations with respect to the PHI received, maintained, or transmitted in the course of providing services to or on behalf of Covered Entity.

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. Definitions. Terms used herein, but not otherwise defined, shall have meaning ascribed by the Privacy Rule and the Security Rule.

1. Breach. "Breach" shall have the same meaning as the term "breach" in 45 C.F.R. §164.502.
2. Business Associate. "Business Associate" shall have the same meaning as the term "business associate" in 45 C.F.R. §160.103 and in reference to the party to this agreement, shall mean Grantee.
3. Covered Entity. "Covered Entity" shall have the same meaning as the term "covered entity" in 45 C.F.R. §160.103 and in reference to the party to this agreement shall mean The City of Austin.
4. Designated Record Set. "Designated Record Set" shall mean a group of records maintained by or for a Covered Entity that is: (i) the medical records and billing records about Individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or

(iii) used, in whole or in part, by or for the covered entity to make decisions about Individuals. For purposes of this definition, the term "record" means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.

5. HIPAA Rules. The Privacy Rule and the Security Rule and amendments codified and promulgated by the HITECH Act are referred to collectively herein as "HIPAA Rules."
6. Individual. "Individual" shall mean the person who is the subject of the protected health information.
7. Incident. "Incident" means a potential or attempted unauthorized access, use, disclosure, modification, loss or destruction of PHI, which has the potential for jeopardizing the confidentiality, integrity or availability of the PHI.
8. Protected Health Information ("PHI"). "Protected Health Information" or PHI shall have the same meaning as the term "protected health information" in 45 C.F.R. §160.103, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of covered entity pursuant to this Agreement.
9. Required by Law. "Required by Law" shall mean a mandate contained in law that compels a use or disclosure of PHI.
10. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her Designee.
11. Sensitive Personal Information. "Sensitive Personal Information" shall mean an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: a) social security number; driver's license number or government-issued identification number; or account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or b) information that identifies an individual and relates to: the physical or mental health or condition of the individual; the provision of health care to the individual; or payment for the provision of health care to the individual.
12. Subcontractor. "subcontractor" shall have the same meaning as the term "subcontractor" in 45 C.F.R. §160.103.
13. Unsecured PHI. "Unsecured PHI" shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5.

- B. Purposes for which PHI May Be Disclosed to Business Associate. In connection with the services provided by Business Associate to or on behalf of Covered Entity described in this Agreement, Covered Entity may disclose PHI to Business Associate for the purposes of providing a social service.
- C. Obligations of Covered Entity. If deemed applicable by Covered Entity, Covered Entity shall:
1. provide Business Associate a copy of its Notice of Privacy Practices ("Notice") produced by Covered Entity in accordance with 45 C.F.R. 164.520 as well as any changes to such Notice;
 2. provide Business Associate with any changes in, or revocation of, authorizations by Individuals relating to the use and/or disclosure of PHI, if such changes affect Business Associate's permitted or required uses and/or disclosures;
 3. notify Business Associate of any restriction to the use and/or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI;
 4. not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered entity;
 5. notify Business Associate of any amendment to PHI to which Covered Entity has agreed that affects a Designated Record Set maintained by Business Associate;
 6. if Business Associate maintains a Designated Record Set, provide Business Associate with a copy of its policies and procedures related to an Individual's right to: access PHI; request an amendment to PHI; request confidential communications of PHI; or request an accounting of disclosures of PHI; and,
 7. direct, review and control notification made by the Business Associate of individuals of breach of their Unsecured PHI in accordance with the requirements set forth in 45 C.F.R. §164.404.
- D. Obligations of Business Associate. Business Associate agrees to comply with applicable federal and state confidentiality and security laws, specifically the provisions of the HIPAA Rules applicable to business associates, including:
1. Use and Disclosure of PHI. Except as otherwise permitted by this Agreement or applicable law, Business Associate shall not use or disclose PHI except as necessary to provide Services described above to or on behalf of Covered Entity, and shall not use or disclose PHI that would violate the HIPAA Rules if used or disclosed by Covered Entity. Also, knowing that there are certain restrictions on disclosure of PHI. Provided, however, Business Associate may use and disclose PHI as necessary for the proper management and

administration of Business Associate, or to carry out its legal responsibilities. Business Associate shall in such cases:

- (a) provide information and training to members of its workforce using or disclosing PHI regarding the confidentiality requirements of the HIPAA Rules and this Agreement;
 - (b) obtain reasonable assurances from the person or entity to whom the PHI is disclosed that: (a) the PHI will be held confidential and further used and disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity; and (b) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been breached; and
 - (c) agree to notify the designated Privacy Officer of Covered Entity of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HIPAA Rules.
- 2. Data Aggregation. In the event that Business Associate works for more than one Covered Entity, Business Associate is permitted to use and disclose PHI for data aggregation purposes, however, only in order to analyze data for permitted health care operations, and only to the extent that such use is permitted under the HIPAA Rules.
- 3. De-identified Information. Business Associate may use and disclose de-identified health information if written approval from the Covered Entity is obtained, and the PHI is de-identified in compliance with the HIPAA Rules. Moreover, Business Associate shall review and comply with the requirements defined under Section E. of this Agreement.
- 4. Safeguards.
 - (a) Business Associate shall maintain appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this Agreement or as Required by Law. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any paper or electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity.
 - (b) Business Associate shall assure that all PHI be secured when accessed by Business Associate's employees, agents or subcontractor. Any access to PHI by Business Associate's employees, agents or subcontractors shall be limited to legitimate business needs while working with PHI. Any personnel changes by Business Associate, eliminating the legitimate business needs for employees, agents or contractors access to PHI – either by revision of duties or termination – shall be immediately reported to Covered

Entity. Such reporting shall be made no later than the third business day after the personnel change becomes effective.

5. Minimum Necessary. Business Associate shall ensure that all uses and disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed; and, the use of limited data sets when possible.
6. Disclosure to Agents and Subcontractors. If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor, Business Associate shall require the agent or subcontractor to agree to the same restrictions and conditions as apply to Business Associate under this Agreement. Business Associate shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the paper or electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity. Business Associate shall be liable to Covered Entity for any acts, failures or omissions of the agent or subcontractor in providing the services as if they were Business Associate's own acts, failures or omissions, to the extent permitted by law. Business Associate further expressly warrants that its agents or subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.
7. Individual Rights Regarding Designated Record Sets. If Business Associate maintains a Designated Record Set on behalf of Covered Entity Business Associate agrees as follows:
 - (a) Individual Right to Copy or Inspection. Business Associate agrees that if it maintains a Designated Record Set for Covered Entity that is not maintained by Covered Entity, it will permit an Individual to inspect or copy PHI about the Individual in that set as directed by Covered Entity to meet the requirements of 45 C.F.R. § 164.524. If the PHI is in electronic format, the Individual shall have a right to obtain a copy of such information in electronic format and, if the Individual chooses, to direct that an electronic copy be transmitted directly to an entity or person designated by the individual in accordance with HITECH section 13405 (c). Under the Privacy Rule, Covered Entity is required to take action on such requests as soon as possible, but not later than 30 days following receipt of the request. Business Associate agrees to make reasonable efforts to assist Covered Entity in meeting this deadline. The information shall be provided in the form or format requested if it is readily producible in such form or format; or in summary, if the Individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying health information may be charged. If Covered Entity maintains the requested records, Covered Entity, rather than Business

Associate shall permit access according to its policies and procedures implementing the Privacy Rule.

- (b) Individual Right to Amendment. Business Associate agrees, if it maintains PHI in a Designated Record Set, to make amendments to PHI at the request and direction of Covered Entity pursuant to 45 C.F.R. §164.526. If Business Associate maintains a record in a Designated Record Set that is not also maintained by Covered Entity, Business Associate agrees that it will accommodate an Individual's request to amend PHI only in conjunction with a determination by Covered Entity that the amendment is appropriate according to 45 C.F.R. §164.526.
 - (c) Accounting of Disclosures. Business Associate agrees to maintain documentation of the information required to provide an accounting of disclosures of PHI, whether PHI is paper or electronic format, in accordance with 45 C.F.R. §164.528 and HITECH Sub Title D Title VI Section 13405 (c), and to make this information available to Covered Entity upon Covered Entity's request, in order to allow Covered Entity to respond to an Individual's request for accounting of disclosures. Under the Privacy Rule, Covered Entity is required to take action on such requests as soon as possible but not later than 60 days following receipt of the request. Business Associate agrees to use its best efforts to assist Covered Entity in meeting this deadline but not later than 45 days following receipt of the request. Such accounting must be provided without cost to the individual or Covered Entity if it is the first accounting requested by an individual within any 12-month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the individual in advance of the fee and is afforded an opportunity to withdraw or modify the request. Such accounting is limited to disclosures that were made in the six (6) years prior to the request (not including disclosures prior to the compliance date of the Privacy Rule) and shall be provided for as long as Business Associate maintains the PHI.
8. Internal Practices, Policies and Procedures. Except as otherwise specified herein, Business Associate shall make available its internal practices, books, records, policies and procedures relating to the use and disclosure of PHI, received from or on behalf of Covered Entity to the Secretary or his or her agents for the purpose of determining Covered Entity's compliance with the HIPAA Rules, or any other health oversight agency, or to Covered Entity. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified by Covered Entity or the Secretary.
9. Notice of Privacy Practices. Business Associate shall abide by the limitations of Covered Entity's Notice of which it has knowledge. Any use or disclosure permitted by this Agreement may be amended by changes to Covered Entity's Notice; provided, however, that the amended Notice shall not affect

permitted uses and disclosures on which Business Associate relied prior to receiving notice of such amended Notice.

10. Withdrawal of Authorization. If the use or disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, or if an exception under the Privacy Rule expressly applies.
11. Knowledge of HIPAA Rules. Business Associate agrees to review and understand the HIPAA Rules as it applies to Business Associate, and to comply with the applicable requirements of the HIPAA Rule, as well as any applicable amendments.
12. Information Incident Notification for PHI. Business Associate will report any successful Incident of which it becomes aware and at the request of the Covered Entity, will identify: the date of the Incident, scope of Incident, Business Associate's response to the Incident, and the identification of the party responsible for causing the Incident.
13. Information Breach Notification for PHI. Business Associate expressly recognizes that Covered Entity has certain reporting and disclosure obligations to the Secretary and the Individual in case of a security breach of unsecured PHI. Where Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses or discloses unsecured paper or electronic PHI, Business Associate immediately following the "discovery" (within the meaning of 45 C.F.R. §164.410(a)) of a breach of such information, shall notify Covered Entity of such breach. Initial notification of the breach does not need to be in compliance with 45 C.F.R. §164.404(c); however, Business Associate must provide Covered Entity with all information necessary for Covered Entity to comply with 45 C.F.R. §164.404(c) without reasonable delay, and in no case later than three days following the discovery of the breach. Business Associate shall be liable for the costs associated with such breach if caused by the Business Associate's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Business Associate's agents, officers, employees or subcontractors.
14. Breach Notification to Individuals. Business Associate's duty to notify Covered Entity of any breach does not permit Business Associate to notify those individuals whose PHI has been breached by Business Associate without the express written permission of Covered Entity to do so. Any and all notification to those individuals whose PHI has been breached shall be made by the Business Associate under the direction, review and control of Covered Entity. The Business Associate will notify the Covered Entity via telephone with follow-up in writing to include; name of individuals whose PHI

was breached, information breached, date of breach, form of breach, etc. The cost of the notification will be paid by the Business Associate.

15. Information Breach Notification for Other Sensitive Personal Information. In addition to the reporting under Section D.12, Business Associate shall notify Covered Entity of any breach of computerized Sensitive Personal Information (as determined pursuant to Title 11, subtitle B, chapter 521, Subchapter A, Section 521.053, Texas Business & Commerce Code) to assure Covered Entity's compliance with the notification requirements of Title 11, Subtitle B, Chapter 521, Subchapter A, Section 521.053, Texas Business & Commerce Code. Accordingly, Business Associate shall be liable for all costs associated with any breach caused by Business Associate's negligent or willful acts or omissions, or those negligent or willful acts or omissions of Business Associate's agents, officers, employees or subcontractors.

E. Permitted Uses and Disclosures by Business Associates. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Business Associates Agreement or in a Master Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. Also, Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with the HIPAA Rules.

1. Use. Business Associate will not, and will ensure that its directors, officers, employees, contractors and other agents do not, use PHI other than as permitted or required by Business Associate to perform the Services or as required by law, but in no event in any manner that would constitute a violation of the Privacy Standards or Security standards if used by Covered Entity.
2. Disclosure. Business Associate will not, and will ensure that its directors, officers, employees, contractors, and other agents do not, disclose PHI other than as permitted pursuant to this arrangement or as required by law, but in no event disclose PHI in any manner that would constitute a violation of the Privacy Standards or Security Standards if disclosed by Covered Entity.
3. Business Associate acknowledges and agrees that Covered Entity owns all right, title, and interest in and to all PHI, and that such right, title, and interest will be vested in Covered Entity. Neither Business Associate nor any of its employees, agents, consultants or assigns will have any rights in any of the PHI, except as expressly set forth above. Business Associate represents, warrants, and covenants that it will not compile and/or distribute analyses to third parties using any PHI without Covered Entity's express written consent.

F. Application of Security and Privacy Provisions to Business Associate.

1. Security Measures. Sections 164.308, 164.310, 164.312 and 164.316 of Title 45 of the Code of Federal Regulations dealing with the administrative, physical and technical safeguards as well as policies, procedures and documentation

requirements that apply to Covered Entity shall in the same manner apply to Business Associate. Any additional security requirements contained in Sub Title D of Title IV of the HITECH Act that apply to Covered Entity shall also apply to Business Associate. Pursuant to the foregoing requirements in this section, the Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the paper or electronic PHI that it creates, has access to, or transmits. Business Associate will also ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect such information. Business Associate will ensure that PHI contained in portable devices or removable media is encrypted.

2. Annual Guidance. For the first year beginning after the date of the enactment of the HITECH Act and annually thereafter, the Secretary shall annually issue guidance on the most effective and appropriate technical safeguards for use in carrying out the sections referred to in subsection (a) and the security standards in subpart C of part 164 of title 45, Code of Federal Regulations. Business Associate shall, at their own cost and effort, monitor the issuance of such guidance and comply accordingly.
3. Privacy Provisions. The enhanced HIPAA privacy requirements including but not necessarily limited to accounting for certain PHI disclosures for treatment, restrictions on the sale of PHI, restrictions on marketing and fundraising communications, payment and health care operations contained Subtitle D of the HITECH Act that apply to the Covered entity shall equally apply to the Business Associate.
4. Application of Civil and Criminal Penalties. If Business Associate violates any security or privacy provision specified in subparagraphs (1) and (2) above, sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to Business Associate with respect to such violation in the same manner that such sections apply to Covered Entity if it violates such provisions.

G. Term and Termination.

1. Term. This Agreement shall be effective as of the Effective Date and shall be terminated when all PHI provided to Business Associate by Covered Entity, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.
2. Termination for Cause. Upon Covered entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - a. Provide an opportunity for Business Associate to cure the breach within 30 days of written notice of such breach or end the violation and terminate this Agreement, whether it is in the form of a stand-alone agreement or an addendum to a Master Services Agreement, if

Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or

- b. Immediately terminate this Agreement whether it is in the form of a stand-alone agreement or an addendum to a Master Services Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.
3. Effect of Termination. Upon termination of this Agreement for any reason, Business Associate agrees to return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, maintained by Business Associate in any form. If Business Associate determines that the return or destruction of PHI is not feasible, Business Associate shall inform Covered Entity in writing of the reason thereof, and shall agree to extend the protections of this Agreement to such PHI and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible for so long as Business Associate retains the PHI.

H. Miscellaneous.

1. Indemnification. To the extent permitted by law, Business Associate agrees to indemnify and hold harmless Covered Entity from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, attorney's fees, defense costs, and equitable relief), for any damage or loss incurred by Covered Entity arising out of, resulting from, or attributable to any acts or omissions or other conduct of Business Associate or its agents in connection with the performance of Business Associate's or its agents' duties under this Agreement. This indemnity shall apply even if Covered Entity is alleged to be solely or jointly negligent or otherwise solely or jointly at fault; provided, however, that a trier of fact finds Covered Entity not to be solely or jointly negligent or otherwise solely or jointly at fault. This indemnity shall not be construed to limit Covered Entity's rights, if any, to common law indemnity.

Covered Entity shall have the option, at its sole discretion, to employ attorneys selected by it to defend any such action, the costs and expenses of which shall be the responsibility of Business Associate. Covered Entity shall provide Business Associate with timely notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist Business Associate in establishing a defense to such action.

These indemnities shall survive termination of this Agreement, and Covered Entity reserves the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel of its own choosing.

2. Mitigation. If Business Associate violates this Agreement or either of the HIPAA Rules, Business Associate agrees to mitigate any damage caused by such breach.

3. Rights of Proprietary Information. Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.
4. Survival. The respective rights and obligations of Business Associate under Section E.3 of this Agreement shall survive the termination of this Agreement.
5. Notices. Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representative as listed in Section 8.7 of the agreement between the City and Grantee or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt.
6. Amendments. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time as necessary, in order to allow Covered Entity to comply with the requirements of the HIPAA Rules.
7. Choice of Law. This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the State of Texas without regard to applicable conflict of laws principles.
8. Assignment of Rights and Delegation of Duties. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary, however, Covered Entity retains the right to assign or delegate any of its rights or obligations hereunder to any of its wholly owned subsidiaries, affiliates or successor companies. Assignments made in violation of this provision are null and void.
9. Nature of Agreement. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, (ii) any fiduciary duty owed by one Party to another Party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties.
10. No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.
11. Equitable Relief. Any disclosure of misappropriation of PHI by Business Associate in violation of this Agreement will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain. Business Associate

therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining Business Associate from any such further disclosure or breach, and for such other relief as Covered Entity shall deem appropriate. Such rights are in addition to any other remedies available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate, and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.

12. Severability. The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.
13. No Third Party Beneficiaries. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not a party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.
14. Headings. The descriptive headings of the articles, sections, subsections, exhibits and schedules of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.
15. Entire Agreement. This Agreement, together with all Exhibits, Riders and amendments, if applicable, which are fully completed and signed by authorized persons on behalf of both Parties from time to time while this Agreement is in effect, constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes all previous written or oral understandings, agreements, negotiations, commitments, and any other writing and communication by or between the Parties with respect to the subject matter hereof. In the event of any inconsistencies between any provisions of this Agreement in any provisions of the Exhibits, Riders, or amendments, the provisions of this Agreement shall control.
16. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules and any applicable state confidentiality laws. The provisions of this Agreement shall prevail over the provisions of any other agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement or the HIPAA Rules.
17. Regulatory References. A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.